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# CARICOM, the Myth of Sovereignty, and Aspirational Economic Integration

Karen E. Bravo

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# CARICOM, the Myth of Sovereignty, and Aspirational Economic Integration

## **Cover Page Footnote**

International Law; Commercial Law; Law

# CARICOM, the Myth of Sovereignty, and Aspirational Economic Integration

*Karen E. Bravo†*

I.	Introduction .....	146
II.	The Caribbean Story .....	153
III.	Regional Integration and the Challenge of Sovereignty ....	155
	A. Regionalism .....	155
	B. Sovereignty .....	158
	C. The Myth of Sovereignty .....	160
	D. Aspirational Economic Integration .....	166
IV.	CARICOM: Why, When, How .....	167
	A. 1973 Treaty of Chaguaramas .....	168
	B. Revised Treaty of Chaguaramas—2001 .....	171
V.	The Many-Headed Hydra .....	176
	A. Description of Institutional Structure .....	178
	1. Organs .....	178
	a. Heads of Government Conference .....	178
	i. Composition, Competence and Powers ....	178
	ii. Voting .....	180
	b. Community Council of Ministers .....	180
	i. Composition and Powers .....	180
	c. Ministerial Councils .....	181
	i. Composition, Competence, and Function..	181
	ii. Voting .....	181
	2. Bodies, Institutions, and Associate Institutions ....	182
	a. Community Bodies .....	182

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b. Community Institutions and Associate Institutions.....	182
c. The Secretariat and the Secretary-General.....	183
B. Analysis.....	183
1. Composition, Function and Voting of Institutional Entities.....	183
a. Composition .....	183
b. Function.....	185
c. Voting.....	187
VI. Flawed Dispute Settlement; Absence of Popular Participation.....	189
A. Dispute Settlement and Enforcement.....	189
B. Limited Role of Citizens in the Integration Process ...	195
VII. Conclusion .....	199

*"The talk in the streets is that CARICOM is a toothless  
mongoose . . . ."*<sup>1</sup>

## I. Introduction

Numerous challenges to economic development confront Caribbean island nations, including the fading away of trade preferences arising from links with metropolitan ex-colonial masters,<sup>2</sup> and the primacy of the General Agreement on Tariffs

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<sup>1</sup> Lloyd B. Smith, *CARICOM or 'Cari-gone'?*, THE JAMAICA OBSERVER INTERNET EDITION, [http://www.jamaicaobserver.com/columns/html/20040305t220000-0500\\_56681\\_obs\\_caricom\\_or\\_cari\\_gone\\_\\_.asp](http://www.jamaicaobserver.com/columns/html/20040305t220000-0500_56681_obs_caricom_or_cari_gone__.asp).

<sup>2</sup> For example, the preferential access to the European market afforded to African, Caribbean, and Pacific bananas ran afoul of the GATT/WTO system, stemming from a challenge from South American producers with the backing of powerful U.S. multinationals. See, e.g., Paul Sutton, *The Banana Regime of the European Union, the Caribbean, and Latin America*, 39 J. OF INTERAMERICAN STUD. & WORLD AFF. 1, 5-36 (1997). The system will phase out in 2008. *Id.* Negotiations continue, but their results remain uncertain. In addition, the higher prices and subsidies paid by the European Union for Caribbean sugar products on the world market have been found to violate the GATT Agreement following challenges to the system's legitimacy by Brazil, Australia and Thailand. See *European Communities—Export Subsidies on Sugar*, 10-14, WT/DS265/R, [http://www.wto.org/english/tratop\\_e/dispu\\_e/265r\\_e.doc](http://www.wto.org/english/tratop_e/dispu_e/265r_e.doc). Even before the WTO Panel report was publicly released, the European Union was already working toward eliminating the subsidies. See *Region's Sugar Industry Sees EU Ruling as Threat to Its Survival*, THE JAMAICA OBSERVER INTERNET EDITION, Aug. 6, 2004, [http://www.jamaicaobserver.com/magazines/business/html/20040805t230000-0500\\_64069](http://www.jamaicaobserver.com/magazines/business/html/20040805t230000-0500_64069)

and Trade (GATT) and World Trade Organization (WTO) system with its requirements of liberalization of economies and markets.<sup>3</sup> Other challenges include the proximity and hegemony of the United States in the hemisphere, the small geographic and market size of most Caribbean states; the mono-agricultural production of some of the smaller islands, and the diminished demand for Caribbean agricultural products. Caribbean nations must also contend with geographic dispersal, namely the consequent challenge of building inter-island ties and the development of regional distribution and transportation systems. Psychological dispersal<sup>4</sup> presents an additional challenge with its sense of separateness arising from the lingering effects of historical economic, legal, cultural and other dependence on colonial era “mother” countries.

The focus of this article is the Caribbean Community (hereinafter CARICOM or the Community), the group of Caribbean states whose membership<sup>5</sup> has expanded from the exclusive core of English-speaking Caribbean countries to now include Suriname and Haiti.<sup>6</sup> Some years following the failure of

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\_obs\_region\_s\_sugar\_industry\_sees\_eu\_ruling\_as\_threat\_to\_its\_survival\_.asp. In June 2005, the European Union announced a thirty-nine percent proposed decrease in the prices that it will pay for African, Caribbean, and Pacific sugar. See Arlene Martin-Wilkins, *Sugar Price Cut to be Phased Over Four Years*, THE JAMAICA OBSERVER INTERNET EDITION, June 25, 2005, [http://jamaicaobserver.com/news/html/20050624t200000-0500\\_83007\\_obs\\_sugar\\_price\\_cut\\_to\\_be\\_phased\\_over\\_four\\_years.asp](http://jamaicaobserver.com/news/html/20050624t200000-0500_83007_obs_sugar_price_cut_to_be_phased_over_four_years.asp).

<sup>3</sup> See, e.g., Hilbourne Watson, *Global Neoliberalism, The Third Technological Revolution and Global 2000: A Perspective on Issues Affecting the Caribbean on the Eve of the 21<sup>st</sup> Century*, in *CONTENDING WITH DESTINY: THE CARIBBEAN IN THE 21<sup>ST</sup> CENTURY* 382 (Kenneth Hall & Denis Benn eds., 2000) [hereinafter *CONTENDING WITH DESTINY*].

<sup>4</sup> See, e.g., Claude Robinson, *The Media and Caribbean Integration*, THE JAMAICA OBSERVER INTERNET EDITION, January 18, 2004, [http://www.jamaicaobserver.com/columns/html/20040118t010000-0500\\_54492\\_obs\\_the\\_media\\_and\\_caribbean\\_integration.asp](http://www.jamaicaobserver.com/columns/html/20040118t010000-0500_54492_obs_the_media_and_caribbean_integration.asp) (reporting, through the prism of cricket, inter-island rivalries, and sense of apartness).

<sup>5</sup> The fifteen CARICOM Member States are: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. CARICOM Member States, <http://www.caricom.org/index.jsp> (follow “Community” hyperlink, then “Members” hyperlink).

<sup>6</sup> However, in response to Jamaica's hospitality to ousted President Jean Bertrand Aristide, Aristide's successor in that office announced his intention to freeze all communications/interaction with CARICOM. See *Aristide Visit Triggers Row: Latortue*

the West Indian Federation,<sup>7</sup> the Caribbean Free Trade Association (CARIFTA) was born from the vision of pioneering Caribbean leaders<sup>8</sup> of newly-independent English-speaking Caribbean islands. Its successor, CARICOM, was to take the lead in pooling the strengths of the English-speaking states to foster their economic development. Unfortunately, CARICOM has yet to live up to its economic integration goals.<sup>9</sup> My inquiry will assess why, three decades after its inception, the organization has not been more successful in emulating the success of the European Union, a paradigm of successful regional economic integration,<sup>10</sup> and has

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*Freezes Relations with Caricom; Claims to Pull Envoy from Kingston*, THE JAMAICA OBSERVER INTERNET EDITION, March 16, 2004, [http://www.jamaicaobserver.com/news/html/20040315T230000-0500\\_57219\\_OBS\\_ARISTIDE\\_VISIT\\_TRIGGERS\\_ROW.asp](http://www.jamaicaobserver.com/news/html/20040315T230000-0500_57219_OBS_ARISTIDE_VISIT_TRIGGERS_ROW.asp). The Jamaican government subsequently announced that ex-President Aristide would leave for exile in South Africa following elections there. *See Powell Pledges to Help Latortue on CARICOM Recognition: Says Probe of Aristide's Ouster Would Serve No Purpose*, THE JAMAICA OBSERVER INTERNET EDITION, April 6, 2004, [http://www.jamaicaobserver.com/news/html/20040406T010000-0500\\_58187\\_OBS\\_POWELL\\_PLEDGES\\_TO\\_HELP\\_LATORTUE\\_ON\\_CARICOM\\_RECOGNITION.asp](http://www.jamaicaobserver.com/news/html/20040406T010000-0500_58187_OBS_POWELL_PLEDGES_TO_HELP_LATORTUE_ON_CARICOM_RECOGNITION.asp). The announcement regarding Haiti's freezing of its relationship with CARICOM was later rescinded. *See Ricky Singh, 3 Leaders Say 'No' to Latortue*, THE JAMAICA OBSERVER INTERNET EDITION, March 23, 2004, [http://www.jamaicaobserver.com/news/html/20040323T000000-0500\\_57575\\_obs\\_leaders\\_say\\_no\\_to\\_latortue.asp](http://www.jamaicaobserver.com/news/html/20040323T000000-0500_57575_obs_leaders_say_no_to_latortue.asp). CARICOM Member States continue to refuse to recognize the provisional government. *See Latortue Slams Mbeki, Hails Patterson*, THE JAMAICA OBSERVER INTERNET EDITION, October 18, 2004, [http://www.jamaicaobserver.com/news/html/20041017T220000-0500\\_67832\\_OBS\\_LATORTUE\\_SLAMS\\_MBEKI\\_HAILS\\_PATTERSON.asp](http://www.jamaicaobserver.com/news/html/20041017T220000-0500_67832_OBS_LATORTUE_SLAMS_MBEKI_HAILS_PATTERSON.asp). The Member States have continued to call for a peaceful resolution of the crisis which accords with democratic ideals and procedures. *See Communiqué Issued at the Conclusion of the Sixteenth Inter-Sessional Meeting of the Conference of Heads of Government of the Caribbean Community*, Feb. 16, 2005, <http://www.caricom.org/jsp/archives/communiques-hgc/16inthgc-2005-communiqué.htm>.

<sup>7</sup> See *infra* Part II for a description of the West Indian Federation.

<sup>8</sup> "While conceding . . . the enduring viability of the idea of regionalism during the post-1962 era, it must be conceded that actors like Vere Bird, Forbes Burnham, Errol Barrow, Eric Williams and Michael Manley were indispensable for its actualisation." *The CARICOM System: Basic Instruments*, in THE UWI-CARICOM PROJECT 6 (Duke E. Pollard ed., 2003).

<sup>9</sup> See *infra* Part III for further discussion.

<sup>10</sup> Through the European Coal and Steel Community, later the European Community and the European Union, former enemy European nations have sought to effect broad integration through the engine of the single market. A paradigm of regional integration it may be, but even in the European Union there are certain aspects of sovereignty that Member States refuse to concede. For example, the United Kingdom has so far opted out of the Euro zone, which would entail surrendering the pound, its

not achieved the integration of economies that is one of its stated central purposes.<sup>11</sup> Specifically, I will explore the role of “sovereignty” as an obstacle to economic integration<sup>12</sup> and address the impact of the Member States’ conceptions of sovereignty on those goals.

The comparative advantage justification for free trade assumes that each trading partner will provide different goods for which its partners will be willing to pay. Given the similarity of the goods and services produced in the islands, the fundamental question arises whether the Caribbean nation states create a natural market for each others’ goods and services. It may be argued that this reality is a flaw at the center of the economic integration endeavor of the English-speaking islands. If most of the islands produce similar agricultural goods and analogous tourism experiences, and only Trinidad and Tobago’s petroleum production offers a sharp distinction in the offering of trade goods, will integration of the Member States’ economies confer the development benefits sought by the Community?

In addition, does the comparatively small size of the CARICOM market create an insurmountable obstacle to integration and effective economic development? A small, integrated market may be no more attractive to foreign investment than smaller scattered markets of disparate size. A definitive answer to these and similar questions, which merit further study, is beyond the scope of this paper. Instead, I accept the validity of the path pursued by the CARICOM Member States through the

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domestic currency, as well as primary control of domestic monetary policy. In late May and early June 2005, voters in France and The Netherlands rejected in separate referenda the adoption of the European Union Constitution. See Dan Bilefsky, *Dutch Rejection of Charter Sparks Larger EU Fears*, WALL ST. J., June 2, 2005, at A3. Their rejection has created a roadblock in a process of deepening European integration. *Id.*

<sup>11</sup> The three principal goals of the original constitutive treaty of the Community, the 1973 Treaty of Chaguaramas Establishing the Caribbean Community and Common Market (the 1973 Treaty), are economic integration, functional coordination, and coordination of foreign policy. See 1973 Treaty, Article 4 reprinted in Pollard, *supra* note 8. For further discussion, see Part IV *infra*. The 1973 Treaty was executed at Chaguaramas, Trinidad, on July 4, 1973, and came into force on August 1, 1973.

<sup>12</sup> “Economic integration,” as used in this paper, evokes the integration achieved through the creation of a single economic space, including federal systems such as Canada or the United States, or that toward which the European Union has made significant strides.

CARICOM treaties and official pronouncements,<sup>13</sup> and I focus on the effectiveness of the mechanisms created to effect that integration.

A central hypothesis of this article is that the mythology of sovereignty may explain the continuing aspirational state of Caribbean economic integration: whereby economic integration, through the creation of a single economic space shared by the Member States, remains an ideal evoked in speeches, but is not yet real. Moreover, the privileging of sovereignty and efforts to guard it have led to the creation of an organizational structure lacking in cohesion and supranational scope. This structure is bereft of the ability or power to enforce Member State implementation of the common market.

Some indicators of the failure of the Community's economic integration effort<sup>14</sup> are revealed by the imponderables of these perhaps rhetorical questions: Why weren't the CARICOM members and their populations—English-speaking and a virtual stone's-throw away from the United States—positioned to undertake some of the high technology and call center jobs moved and moving offshore to countries such as India, China, and Mexico? Why did CARICOM members not have the ability to coordinate negotiation with the United States to draw up a template of the Shiprider Agreements<sup>15</sup> that were executed by so

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<sup>13</sup> See, e.g., Press Release, CARICOM, CARICOM Press Release of February 16, 2005, Single Market, Global Cooperation Highlighted at Suriname Meeting (Feb. 16, 2005), [http://www.crn.org/documents/press\\_release\\_2005/16th\\_intersessional/opening\\_ceremony\\_16intersessional\\_suriname.pdf](http://www.crn.org/documents/press_release_2005/16th_intersessional/opening_ceremony_16intersessional_suriname.pdf) ("Today, the task of our generation is to see to the implementation (of the CSME) through to finality, and we can afford no slippage," quoting Secretary General of CARICOM, Mr. Edwin Carrington.).

<sup>14</sup> See, e.g., *Legal Regime of Free Trade in Services*, Vol.1: No. 6 TRADE WINS (2001), for a summary of a report commissioned by the Caribbean Export Development Agency outlining the challenges faced by regional businesses due to the lack of implementation of economic integration commitments. They include an unpredictable investment climate due to domestic ministerial discretion in the issuance of licenses, discrimination between domestic and "foreign" firms, and other protectionist policies. *Id.*

<sup>15</sup> The agreements, more formally termed "Agreements Concerning Co-operation in Suppressing Illicit Maritime Drug Trafficking," allowed the United States to undertake wide-ranging drug interdiction activities within the territorial waters of the island states. See, e.g., Nicole Clarke, *Current Developments in International Law: "Shiprider Agreements,"* 2 CARIB. L.B. 61 (1997). It is sadly ironic that jealously held sovereignty has stymied the Community's economic integration goals; yet, of the



many smaller CARICOM members? Why does CARICOM not have a merchant marine to facilitate intra-Community trade, or a joint coast guard or navy force that would contribute to safeguarding the security, marine heritage, and resources of the member countries? In an era of globalization and the wealth creation of knowledge systems, why is there no Community patent and trademark office to facilitate Community protection and exploitation of technological and other intellectual property rights created within CARICOM?<sup>16</sup> These economic development gaps are clear, and I posit that it is the fear of loss of sovereignty and the seduction of a myth of sovereignty that have prevented the Community from implementing the economic integration envisioned in 1973. After fifteen years of delay, the Caribbean Single Market and Economy (CSME) was finally scheduled for launch in January 2005.<sup>17</sup> The date of launch was further delayed to December 2005.<sup>18</sup> The launch of the Caribbean Court of Justice, scheduled for November 2004, was delayed until the first quarter of 2005,<sup>19</sup> and finally came into effect on April 16, 2005.<sup>20</sup>

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CARICOM countries, only Barbados and Jamaica successfully negotiated agreements that placed some limitations on the scope of United States activities in those countries' territorial waters and stipulated (mostly symbolic) reciprocity of the rights and obligations of the United States and Caribbean signatories. *Id.* See also Kathy Brown, *Now That the Ship Has Docked: A Postscript to the Shiprider Debate in The Caribbean Community*, in *THE CARIBBEAN COMMUNITY: BEYOND SURVIVAL* 527-35 (Kenneth O. Hall, ed., 2001) [hereinafter *BEYOND SURVIVAL*].

<sup>16</sup> Article 66 of the Revised Treaty (hereinafter defined) obligates the Council on Trade and Economic Development to promote intellectual property rights through, among other things, the strengthening of intellectual property regimes and the establishment of a regional administration of intellectual property rights (other than copyright). That regime is not yet in place. See Havelock R. Brewster, *The Caribbean Single Market and the Economy: Is it Realistic Without Commitment to Political Unity?* Mar. 14, 2003, <http://www.caricom.org/jsp/speeches/csme-politicalunity-brewster.htm>.

<sup>17</sup> See Rickey Singh, *Awaiting Outcome of Next Month's CSME Summit*, *THE JAMAICA OBSERVER INTERNET EDITION*, Oct. 10, 2004, [http://www.jamaicaobserver.com/columns/html/20041010T000000-0500\\_67391\\_OBS\\_AWAITING\\_THE\\_OUTCOME\\_OF\\_NEXT\\_MONTH\\_S\\_CSME\\_SUMMIT.asp](http://www.jamaicaobserver.com/columns/html/20041010T000000-0500_67391_OBS_AWAITING_THE_OUTCOME_OF_NEXT_MONTH_S_CSME_SUMMIT.asp).

<sup>18</sup> See Tracey Thompson, *Despite Size, Region Can Compete in FTAA—Dr. Hamilton* *JAMAICA INFORMATION SERVICE*, March 17, 2005, [http://www.jis.gov.jm/foreign\\_affairs/html/20040316t070000-0500\\_2003\\_jis\\_despite\\_size\\_region\\_can\\_compete\\_in\\_ftaa\\_dr\\_hamilton.asp](http://www.jis.gov.jm/foreign_affairs/html/20040316t070000-0500_2003_jis_despite_size_region_can_compete_in_ftaa_dr_hamilton.asp).

<sup>19</sup> Singh, *supra* note 17. The launch of both the CSME and the Caribbean Court of Justice were delayed by a ruling of the Judicial Committee of the Privy Council of the House of Lords of the United Kingdom finding unconstitutional the enactment by

Analysis of many factors indicate that the reluctance of Member States to relinquish sovereign powers and prerogatives to the regional organization has undermined the CARICOM economic integration endeavor. These factors include the diffusion of powers and responsibilities within CARICOM, the non-allocation of legislative initiative and power to the purely CARICOM Organs and Institutions, the husbanding of decision-making capacity by the Heads of Government Conference and Council of Ministers—the primary Organs<sup>21</sup> of the Community—and the halting and incomplete progress toward the CSME that was introduced with much fanfare in 1989.<sup>22</sup> Caribbean leaders, blinded by a seductive myth of sovereignty, allowed the economic development opportunity presented by CARICOM to falter. While regional integration has achieved notable success in cultural, educational, and other functional<sup>23</sup> spheres, economic integration remains aspirational<sup>24</sup>—a moving will o' the wisp not yet fully embraced.

Part II provides a short, historical background of the Caribbean

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Jamaica of legislation to install the Caribbean Court of Justice as the court of final appeal. *See infra* note 230 for additional details.

<sup>20</sup> *See* Press Release, CARICOM, CARICOM Press Release of April 16, 2005, Caribbean Court of Justice is Inaugurated (Apr. 16, 2005), [http://www.caricom.org/jsp/pressreleases/pres82\\_05.htm](http://www.caricom.org/jsp/pressreleases/pres82_05.htm).

<sup>21</sup> *See infra* Part V for explanation of upper case terms in this paragraph.

<sup>22</sup> *See* Byron Blake, Asst. Secretary-General, Regional Trade and Economic Integration, CARICOM Secretariat, Importance of, and state of implementation of the CSME: presentation at Consultation on Antigua's obligation under the CARICOM Single Market and Economy, August 25, 2003, <http://www.caricom.org/jsp/speeches/csme-importanceandimplementation-blake.htm> (Aug. 25, 2003); Leela Narinesingh, *Caribbean Single Market Economy . . . A Process, Not an Event*, THE TRINIDAD GUARDIAN, May 19, 2005, <http://www.guardian.co.tt/archives/2005-05-22/bussguardian16.html>.

<sup>23</sup> "Functional cooperation" is one of the three principal goals of CARICOM, encompassing areas such as weather reporting (the Caribbean Meteorological Society), fisheries (the Caribbean Regional Fisheries Mechanism), and tourism (the Caribbean Tourism Organization). The other goals are economic integration and the co-ordination of Member State foreign policy. *See* 1973 Treaty, *supra* note 11, art. 4.

<sup>24</sup> *See generally* Brewster, *supra* note 16 (summary of the lack of implementation in such diverse spheres as competition policy, dispute settlement, free movement of the factors of production, and fiscal policy harmonization). *See also* David S. Berry, *The New Caribbean Community: An Introduction to the Institutional Changes in the Revised Treaty of Chaguaramas*, 7 CARIB. L.B. 1, 2-3 (2002).

region, including the English-speaking Caribbean, pointing to the origins of the cultural and political divisions remaining from the colonial experience. Part III contextualizes the CARICOM experiment by briefly outlining the worldwide development of regionalism and institutional minima for the attainment of economic integration. Moreover, Part III will discuss the terms “myth of sovereignty” and “aspirational economic integration.” Part IV briefly summarizes the modern history of Caribbean regional integration, from the failure of the West Indian Federation to the Revised Treaty of Chaguaramas.<sup>25</sup> Part V outlines the CARICOM institutional structure, illuminating the diffusion of power within the organization through the proliferation of Community organizations, and analyzing some of the advantages and disadvantages of the chosen framework. Part V also compares the CARICOM institutional structures to the principal institutions of the European Union, to highlight characteristics reflecting CARICOM’s inspiration by, or rejection of, European Union institutional choices. Part VI discusses the new dispute settlement mechanisms of the Revised Treaty, the lawmaking power of the Community, and the lack of participation by the Caribbean people in the regional economic integration process. The Conclusion surveys some current developments and looks ahead to prospects for the CARICOM economic integration project.

## II. The Caribbean Story<sup>26</sup>

The Caribbean Basin, “discovered” during Christopher Columbus’s first voyage in 1492, includes the hundreds of islands in the Caribbean Sea and countries on the mainland that encircle it.

Columbus’s arrival preceded the invasion of the New World by Spanish conquistadors, English and French pirates, and settlers as well as Dutch merchants. In the hundreds of years in their role

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<sup>25</sup> Revised Treaty of Chaguaramas, which amended the 1973 treaty that established the Caribbean Community, has not yet been executed by all the CARICOM Member States. *See generally* Revised Treaty of Chaguaramas Establishing The Caribbean Community including The CARICOM Single Market and Economy, CARICOM, July 4, 1973, [http://www.caricom.org/jsp/community/revised\\_treaty-text.pdf](http://www.caricom.org/jsp/community/revised_treaty-text.pdf) [hereinafter the Revised Treaty].

<sup>26</sup> A complete history of the Caribbean is beyond the scope of this article. Readers interested in a more detailed history should see, for example, J. H. PARRY ET AL., *A SHORT HISTORY OF THE WEST INDIES* (4th ed. 1987).

as a contested European theatre of action, the island and mainland territories witnessed, among other things, the following: the eradication of indigenous people from most of the islands; the creation of colonies that produced beef for conquistadors in Mexico and tobacco, sugar, and bananas for Europe; the introduction of the African Slave Trade and slavery; revolts; the Haitian Revolution; eventual emancipation of the slaves on the remaining islands; the Spanish-American War; World War II and pre-independence struggles; and the Cuban Missile Crisis.

The islands frequently changed hands among the European powers, resulting in the diversity of languages, cultures, and political systems existing today on the islands and in the mainland territories of North, Central, and South America. While the English, Spanish, and French had the largest colonial territories in the Caribbean, the Dutch and Swedes were also present in the theatre of influence.

The cultural, economic, and political ties resulting from each territory's particular interaction with the European powers has created "naturally" occurring exclusive groupings: St. Maartens, St. Eustatius, Saba, Curacao, Bonaire, and Aruba look to the Netherlands; Guadeloupe, St. Martin, Martinique and St. Barthelemy look to France; Cuba and Puerto Rico look to Spain and the United States. The territories commonly referred to as the Commonwealth Caribbean and/or the British West Indies are: the British Virgin Islands, The Bahamas, the Cayman Islands, the Turks and Caicos Islands, Jamaica, Trinidad, Montserrat, Anguilla, St. Vincent and the Grenadines, St. Kitts, Nevis, Trinidad and Tobago, Dominica, Barbados, Belize, and Guyana. Following its own fight for independence, the United States of America, a relative newcomer to the Caribbean theatre of action, acquired Puerto Rico and the U.S. Virgin Islands through warfare and purchase of territories.

Prior to the gradual concession of the territories of their individual independence, Britain first attempted to consolidate the Caribbean colonies' political existence into the West Indian Federation, a federal political organization of all of Britain's West Indian territories. The federal system was, rejected by successive popular referenda in Jamaica and Trinidad, and their consequent withdrawal led to the collapse of the Federation. Beginning in 1962 with Jamaica, the British territories were granted

independence from their colonial master. Following the ill-fated experiment in federation, each island has been “going it alone,” except those territories such as Montserrat, Anguilla, and the Turks and Caicos Islands that remain dependent territories of the United Kingdom.

The colonial influence continues to be strong with respect to language, culture, political infrastructure, and education. It is impossible to forget that Jamaica, the first independent British West Indian territory, has been a separate state for only forty-two years, while other members of the Community, such as Montserrat, continue to be dependent territories. Necessarily, the integration movements that followed the federation experiment must be analyzed in light of the Member States’ colonial past and the brief duration of their independent existence.

### III. Regional Integration and the Challenge of Sovereignty

To contextualize the CARICOM integration effort amid worldwide developments, this Part summarizes the post-World War II increase in regionalism, classical sovereignty under international law, the reasons Caribbean nation state sovereignty may be more mythic than real, and defines “aspirational economic integration.”

#### A. Regionalism

The twentieth century has borne witness to a rising tide of regionalism: countries in far-flung geographic concentrations have created organizations meant to strengthen ties that they hope will bring greater economic well-being, political security, and the fostering of cultural links.<sup>27</sup> While states have formed regional groupings for hundreds of years,<sup>28</sup> that movement has accelerated since the end of World War II.<sup>29</sup> Included among the new regional

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<sup>27</sup> See Sungjoon Cho, *Breaking the Barrier Between Regionalism and Multilateralism: A New Perspective on Trade Regionalism*, 42 HARV. INT’L L.J. 419, 423-35 (2001) (discussing and analyzing some of the theories put forward to explain the modern rise in regional trading blocs).

<sup>28</sup> For example, a customs union formed among small German states in the early 1800s. *Id.* at 420.

<sup>29</sup> See generally Joseph L. Brand, *The New World Order of Regional Trading Blocks*, 8 AM. U. J. INT’L L. & POL’Y 155 (1992) (defining trading blocs and showing how the blocs may affect agricultural consultants).

groupings are the European Union,<sup>30</sup> the North American Free Trade Agreement (NAFTA), the African Union, the Association of Southeast Asian States (ASEAN), and CARICOM. The purposes actuating the formation of the groups vary, including regional security, cultural ties, and economic or industrial development through increased trade. The purposes of integration can and will overlap,<sup>31</sup> and these evolving purposes determine the type and structure of the regional grouping.

Some regional organizations<sup>32</sup> may take the form of trading blocs,<sup>33</sup> while others—notably the European Union and

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<sup>30</sup> Throughout this article the European Union is used as a comparator for CARICOM's implementation of its stated integration purpose and its institutional structure. The question arises: Is the European Union the most appropriate comparator for CARICOM, or would the African Union or MERCOSUR be more suitable? The vast disparity between the two regional organizations with respect to the size of population and geographic area, the potential for intra-regional trade, and the development status of the Member States begs the question. Despite these disparities, the usefulness of the European Union as a comparator is strongly convincing due to the importance of the following: (1) in the author's opinion, it is the most successful regional integration experiment of sovereign states in the world, (2) a comparison of the CARICOM and European Union treaties reveals that CARICOM drafters have been inspired by (and on occasion rejected) salient features of the European Union structure (*see infra* Part VB for discussion), and (3) like the European Union, the CARICOM treaties provide for the creation of a single market, a single economic space outside the context of a federation of states. *See Revised Treaty, supra* note 25, Preamble; Consolidated Version of the Treaty Establishing the European Community, Dec. 24, 2002, O.J. (C325), 39 [hereinafter Consolidated Treaty].

<sup>31</sup> For example, the rationales behind the formation of the European Communities include: as a counterpoise to the Soviet Union, the prevention of another war between Germany and France, and the acceleration of the rebuilding of Europe's economies following World War II. Cho, *supra* note 27.

<sup>32</sup> Examples of regional organizations include the European Community, the Association of South East Asian nations (ASEAN), and the Mercado do Sur (Mercosur). *See* Allan S. Galper, *Restructuring Rules of Origin in the U.S.-Israel Free Trade Agreement: Does the EC-Israel Association Agreement Offer an Effective Model?* 19 FORDHAM INT'L L.J. 2028 n.50 (1996).

<sup>33</sup> Article XXIV of the 1947 General Agreement on Tariffs and Trade counterintuitively encourages regional trading blocs. General Agreement on Tariffs and Trade, art. 24, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter the "GATT Agreement"]. Such encouragement is counterintuitive in view of the underpinning trade liberalization principles of GATT Agreement, such as National Treatment and Most Favored Nation, which must be applied by each GATT member to every other member. Extension of more beneficial trade terms to a smaller subset of members would appear to contravene those principles of GATT. However, viable explanations for the seeming contradiction include: (1) the capitulation of the GATT drafters to the reality of a drive

CARICOM—seek to establish a deeper<sup>34</sup> and wider<sup>35</sup> association of states. A typical regional trading bloc may create either a free trade area<sup>36</sup>—where members ban tariffs and quotas on each others' products and agree not to discriminate against each others' products, or a customs union—where all members impose a common external tariff on imports from non-members while lowering or eliminating intra-member tariffs. Both the European Union and the Caribbean Community seek to create a single economic market as a centerpiece of their regional integration efforts.<sup>37</sup>

A single economic market advances several steps beyond the integration fostered by a regional trading bloc. Core features of economic integration and a single economic space include the removal of barriers or impediments to the movement of the two mobile classic factors of production—labor and capital—as well as goods and services. Another feature includes the harmonization of laws that affect the single market, including, among others, competition, intellectual property, and regulatory standards for products.<sup>38</sup>

Analysis of the European integration project indicates that minimum requirements of the achievement of economic integration among sovereign states include: (1) limited opt-out opportunities on the part of Member States; (2) the direct effect

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toward regionalism, and (2) recognition that experimentation with limited (i.e., regional) liberalization of trade, may act as training wheels that lead to full-fledged acceptance of the benefits of multilateral liberalization. For some discussion of the reasons underlying GATT/WTO indulgence of this seeming contradiction, see Cho, *supra* note 27.

<sup>34</sup> The ambit of a regional organization is deepened by the addition of spheres of competence that increase the penetration of the regional organization's activities and authority in the formerly purely internal domestic affairs of its membership. A deeper association of Member States is a necessary precursor to the creation of a single economic space.

<sup>35</sup> A regional organization's sphere of influence is widened by the expansion of its membership to include a growing number of members that increases or broadens the territorial ambit of the organization.

<sup>36</sup> See, e.g., North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993)

<sup>37</sup> See Preambles to the Revised Treaty, *supra* note 25, and the Consolidated Treaty, *supra* note 30.

<sup>38</sup> See, e.g., George Berman et al., Cases and Materials on European Union Law 536-37 (2d ed. 2002).

and supremacy of measures intended to cause economic integration, as well as limited time and enforcement periods for implementation; (3) an independent supranational body that drives, polices and enforces economic integration; (4) removal of barriers to the mobile factors of production, such as capital and labor; (5) a legitimate dispute settlement mechanism with enforcement powers; (6) a strategic planning/decision making mechanism that defies deadlock; and (7) private rights of action against the Member States.

Such regional integration arrangements among states, with the attendant effects of cultural, economic, and functional integration, implicate and threaten—perhaps more than a typical international treaty—the sovereign power of Member States. This threat arises from the need to create a central body with supranational powers to design, build, and monitor the common economic space, in particular, through enforcement of Member State implementation and coordination.

### *B. Sovereignty*

The classical conception of state sovereignty is an absolute one that envisions the State with its rights within its territory unfettered by laws or other constraints<sup>39</sup> and with laws applicable to extra-territorial actions imposed only through its consent or the coercion of other states.<sup>40</sup>

Since the end of World War II, that absolutist concept has evolved to a more nuanced view of the powers, duties, responsibilities, and restraints on state sovereignty.<sup>41</sup> Indeed, of

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<sup>39</sup> "[S]tates assert, in relation to [their] territory and population, what may be called internal sovereignty, which means supremacy over all other authorities within that territory or population." HEDLEY BULL, *THE ANARCHICAL SOCIETY: A STUDY OF WORLD POLITICS* 8 (2d ed. 1977).

<sup>40</sup> "[States] assert . . . what may be called external sovereignty, by which is meant not supremacy but independence of outside authorities." *Id.*

<sup>41</sup> For example, shortly after World War II, Judge Alvarez of the International Court noted, with respect to a dispute between the United Kingdom and Albania: "We can no longer regard sovereignty as an absolute and individual right of every State, as used to be done under the old law founded on the individualist régime, according to which States were only bound by the rules which they had accepted. To-day, owing to social interdependence and to the predominance of the general interest, the *States are bound by many rules which have not been ordered by their will.*" *The Corfu Channel Case*, 1949 I.C.J. 39, 43 (Apr. 9) (individual opinion by Judge Alvarez) (emphasis



“sovereignty,” it has been said that “[w]hile respect for the fundamental sovereignty and integrity of the state remains central, it is undeniable that the centuries-old doctrine of absolute and exclusive sovereignty no longer stands, and was in fact never so absolute as it was conceived to be in theory.”<sup>42</sup>

As scholars and jurists have questioned the import of sovereignty and analyzed the decline in the absolutist conception,<sup>43</sup> Professor Louis Henkin, a leading international law scholar, has gone so far as to question the legitimacy<sup>44</sup> of the concept of sovereignty: he has characterized sovereignty as a myth, noting the sometimes deleterious impact on human rights, the environment, and other competing international norms.<sup>45</sup> Henkin argues that the transposition of the concept of sovereignty from the domestic sphere—that is, “the relations between the sovereign and his or her subjects”<sup>46</sup> to the international sphere, was an error that has resulted in “distortion” and “confusion.”<sup>47</sup> Henkin further points out that globalization, human rights, and the need to cooperate on the international front—including intervention in states’ violent domestic conflicts—have altered the understanding of sovereignty.<sup>48</sup>

Adherence to the absolutist conception of sovereignty can be viewed as a reaction to the experience of colonization. Former

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added); see also John R. Worth, *Globalization and the Myth of Absolute National Sovereignty: Reconsidering the “Un-Signing” of the Rome Statute and the Legacy of Senator Bricker*, 79 IND. L.J. 245, 261-62 (2004) (arguing for a functional re-conception of sovereignty that reflects the current nature of international law and the relationships among states).

<sup>42</sup> Boutros Boutros-Ghali, *Empowering the United Nations*, 71 FOREIGN AFF. 89, 98 (1992).

<sup>43</sup> See, e.g., Gerry J. Simpson, *The Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age*, 32 STAN. J. INT’L L. 255, 263 (1996) (“At an institutional level, the rise of a preoccupation with internationalism and interdependence has brought with it a recognition that absolute state sovereignty is neither desirable nor possible.”).

<sup>44</sup> Louis Henkin, Lecture, *That “S” Word: Sovereignty, and Globalization, and Human Rights, Et Cetera*, 68 FORDHAM L. REV. 1, 2 (1999) (“It is part of my thesis that the sovereignty of states in international relations is essentially a mistake, an illegitimate offspring.”).

<sup>45</sup> *Id.* at 2-3.

<sup>46</sup> *Id.* at 2.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*, *passim*.

colonies and their leaders, newly emerged from the domination of more powerful developed states, have viewed the classical attributes of sovereignty as a bulwark against further domination and a mechanism through which to assert demands for the equality of all states in the international system.<sup>49</sup> In addition, the powers stemming from the absolutist conception of sovereignty proved attractive and useful to totalitarian leaders seeking wide discretion to bolster their individual power.<sup>50</sup> The reluctance to cede elements of this broad conception of sovereignty continues to create obstacles for the development of true regional integration. One commentator notes:

Though regional integration made economic sense, it would have taken political power away from the elites of these countries. For example, states were unwilling to cede any significant power to regional secretariats, which resulted in heads of states of member nations acting as supreme decision-making authorities. . . . *For this reason, the disintegration of virtually all integration initiatives in developing countries may largely be blamed on rigid adherence to the state sovereignty doctrine . . . .*<sup>51</sup>

### C. The Myth of Sovereignty

Having inherited the classical conception of sovereignty from their colonial masters amidst the doctrinal contraction of the theory,<sup>52</sup> the leaders of the Caribbean states, in reaction to the cognitive dissonance engendered by the contradiction between the reality of "sovereign" independence and the myth, hew closely to the myth and keep a tight grasp on the shreds of sovereignty left to

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<sup>49</sup> See, e.g., P. Kenneth Kiplagat, *An Institutional and Structural Model for Successful Economic Integration in Developing Countries*, 29 TEX. INT'L EX. L.J. 39, 41-44 (1994).

<sup>50</sup> *Id.* at 42. Christophe Mullerleile, in his thorough study of the Commonwealth Caribbean integration process, points percipitently to the reluctance of leaders of significant stature within the confines of their small nations to broaden the ambit of activity where they might lose in stature and importance—that is, the big-fish-in-the-small-pond syndrome. See Christophe Mullerleile, CARICOM INTEGRATION: PROGRESS AND HURDLES—A EUROPEAN VIEW 299 (Fitzroy Fraser trans., Kingston Publishers Ltd., 1996).

<sup>51</sup> Kiplagat, *supra* note 49, at 43-44 (emphasis added).

<sup>52</sup> See, e.g., LORI DAMROSCH ET AL., INTERNATIONAL LAW, CASES AND MATERIALS 2-3 (4th ed. 2001).

them. The inability to concede to a newly constructed regional organization, CARICOM, has created a barrier to the aspired-to economic integration.

While it must be acknowledged that CARICOM has encountered many challenges throughout its history,<sup>53</sup> it is nevertheless apparent that the opportunities presented by the chance to work together in an integrated fashion have been poorly utilized.<sup>54</sup> Instead, the reluctance of Caribbean leaders to pool their collective sovereignties is manifested in the creation of a weak institutional framework for CARICOM, the inadequate dispute settlement and enforcement provisions, and slow integration of of CARICOM treaty obligations into national law.<sup>55</sup> Further, the unilateralist approach of some CARICOM members has undercut the potential of the organization.<sup>56</sup>

The word "myth" has several meanings, two of which are pertinent to this analysis: (1) a story or tale whose re-telling reveals an essential psychological, emotional, or cultural truth;<sup>57</sup>

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<sup>53</sup> See Pollard, *supra* note 8, at 18 (speaking of the oil crises of the 1970s that emerged shortly after the signing of the founding 1973 Treaty); see also Owen Arthur, *The Future of the Caribbean Community and Common Market* in BEYOND SURVIVAL, *supra* note 15, at 622, 622-630; see generally Richard L. Bernal, *The Caribbean in the International System: Outlook for the First Twenty Years of the Twenty-First Century* in CONTENDING WITH DESTINY, *supra* note 3, at 295. Other challenges include small market size, "limited range of natural resources," severe dependence on developed economies for both aid and economic activity, and "susceptibility to natural disasters." See P. K. Menon, *Regional Integration: A Case Study of the Caribbean Community [CARICOM]*, 5 CARIB. L. REV. 81, 105-106 (1995).

<sup>54</sup> See *supra* notes 14-20 and accompanying text.

<sup>55</sup> See Brewster, *supra* note 16. Only in March 2004, four months shy of the third anniversary of the finalization of the text of the Revised Treaty, did the Jamaican Senate pass a bill to repeal legislation under the 1973 Treaty and implement the CSME. See *Senate Passes Bill to Repeal Common Market Act*, THE JAMAICA OBSERVER INTERNET EDITION, [http://www.jamaicaobserver.com/news/html/20040330t200000-0500\\_57906\\_obs\\_senate\\_passes\\_bill\\_to\\_repeal\\_common\\_market\\_act.asp](http://www.jamaicaobserver.com/news/html/20040330t200000-0500_57906_obs_senate_passes_bill_to_repeal_common_market_act.asp). The Revised Treaty was finalized July 2001. See Pollard, *supra* note 8, at 22.

<sup>56</sup> For example, following the entry into force of the NAFTA Agreement among the U.S., Canada, and Mexico, two of the larger Community members, Jamaica and Trinidad and Tobago, decided to pursue individual arrangements to join the NAFTA zone. See, e.g., Vaughan A. Lewis, *Looking from the Inside Outwards: The Caribbean in the International System after 2000* in CONTENDING WITH DESTINY, *supra* note 3, at 329, 336.

<sup>57</sup> A myth may be defined as "a traditional, typically ancient story dealing with supernatural beings, ancestors or heroes that serves as a fundamental type in the

and (2) a lie,<sup>58</sup> a sham, a charade, or perhaps an unattainable yet sought-after goal.

For the Member States of the Community, as for many former colonies, the myth of sovereignty is both a yearned-for psychological and essential truth and a factual lie. It is a "truth" which they crave, as an essential characteristic of the free people and states they now are, with the ability and right to say to the rest of the world, including their former colonial masters: "Here, thou shalt not pass." It is a "lie" because economic, political and geo-strategic realities place limitations on the ex-colonies' ability to act externally (or even internally), limitations which may not be imposed on longer-established and more powerful nations.<sup>59</sup> One might paraphrase Orwell as stating, "All sovereign states are equal. But some are more equal than others."<sup>60</sup>

For Caribbean nations, as for other former colonies, the construction and deconstruction<sup>61</sup> of sovereignty is particularly

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worldview of a people, as by . . . delineating the psychology, customs, or ideals of society." See THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2003), <http://dictionary.reference.com/search?=myth>. For example, in the Anancy tales of Jamaica, the eponymous anti-hero is an arch trickster who navigates his social obligations and the challenges of daily life through deception and duplicity, mirroring the stratagems employed for survival by Africans involuntarily transported to the island for labor. Anancy thus personifies the quality of survival so admired by Jamaicans. See Joyce Jonas, ANANCY IN THE GREAT HOUSE: WAYS OF READING WEST INDIAN FICTION 51-53 (1990). Respect for those who confound authority figures is strongly imbued in modern Jamaican character.

<sup>58</sup> The Oxford English Dictionary includes in its definition of "myth": "A widespread but untrue or erroneous story or belief; a widely held misconception; a misrepresentation of the truth." See THE OXFORD ENGLISH DICTIONARY (online ed. 2005), <http://www.oed.com>.

<sup>59</sup> For example, in 2003, the U.S. and an international coalition of countries invaded Iraq (a sovereign nation) despite U.N. Security Council disapproval. See, e.g., Sean D. Murphy, Assessing the Legality of Invading Iraq, 92 GEO. L.J. 173, 233 (2004). It is hard to imagine that Argentina, for example, could invade Brazil with the same *sang froid* and absence of international sanctions.

<sup>60</sup> See GEORGE ORWELL, ANIMAL FARM: A FAIRY STORY 43 (First Signet Classic prtg.1956) (1946) ("All animals are equal. But some are more equal than others.").

<sup>61</sup> Jacques Derrida's theory of deconstruction exposes unquestioned assumptions and "internal contradictions in philosophical and literary language." See OXFORD ENGLISH DICTIONARY, *supra* note 58, at "deconstruction." While newly independent ex-colonies expected to command the attributes of sovereignty of their colonial "mother" countries, in fact their poverty, lack of preparation and infrastructure deficits confined them to a quasi-state status. See generally Robert H. Jackson, QUASI-STATES:

challenging. Not only must the reverberations in the region of United States hegemony<sup>62</sup>—which is acutely experienced due to the islands' small size and proximity—be an integral part of the formula, so must the nations' recent emergence from colonialism and their people's desire to exercise newly won self-determination. More recently, the shocks of globalization, the collapse of the Lome Convention's<sup>63</sup> banana regime,<sup>64</sup> and the U.S.

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SOVEREIGNTY, INTERNATIONAL RELATIONS, AND THE THIRD WORLD (1990).

<sup>62</sup> To the Monroe Doctrine (whereby the U.S. informed the colonial powers of the Old World that the New World was now an exclusively U.S. sphere of influence) of the nineteenth century must be added multiple occupations of Haiti, the continuing embargo of Cuba, and the 1980s invasion of Grenada. See, e.g., John Maxwell, *Our Debt Is Long Past Due*, THE JAMAICA OBSERVER INTERNET EDITION, [http://www.jamaicaobserver.com/columns/html/20040328t030000-0500\\_57787\\_obs\\_our\\_debt\\_is\\_long\\_past\\_due.asp](http://www.jamaicaobserver.com/columns/html/20040328t030000-0500_57787_obs_our_debt_is_long_past_due.asp) (arguing in favor of CARICOM intervention to assist the people of Haiti) ("In 1994, the Americans were intervening for the 29th time in Haiti."). While fear of the Soviet Union and resistance to U.S. economic domination sharpened the war-weary stimulus to the formation and successful integration of the European Union, the proximity and hegemony of the United States has undermined regional integration attempts in the Caribbean, perhaps because no counterbalancing "great" power has strong strategic interests in the region. See, e.g., Bull, *supra* note 39, at 265.

<sup>63</sup> The First Lome Convention, marking the beginning of the cooperation between Europe and the ACP Group (Secretariat of the African, Caribbean, and Pacific Group of States (ACP Group)), came into effect in 1975 and was signed by 46 African states and nine European countries. Lome Convention I, ACP-EEC, Feb. 28, 1975, 14 I.L.M. 595 (European Economic Community-African, Caribbean, and Pacific Countries: ACP-EEC). The Convention accorded non-reciprocal trade preferences to the ACP countries and established Stabex: a mechanism for compensating losses in export earnings caused by price fluctuations. The Second Lome Convention, marked the advent of Sysmin: a mechanism similar to Stabex but concerned with mining products. Lome Convention II, ACP-EEC, Oct. 31, 1979, 19 I.L.M. 327 (1980). The Third Lome Convention emphasized food self-sufficiency for ACP States, while the Fourth Lome Convention introduced a political dimension of cooperation. Lome Convention III, ACP-EEC, Dec. 8, 1984, 24 I.L.M. 571 (1985); Lome Convention IV, ACP-EEC, Dec. 15, 1989, 29 I.L.M. 783 (1990).

<sup>64</sup> Further evidencing Caribbean states' inability to direct their future is the fact that the breakdown of this system stems from a dispute within the GATT/WTO organization between the EU and the U.S. and some Latin American states acting as the proxies of U.S. big business. See Sutton, *supra* note 2, at 5-13. The GATT/WTO system's dispute settlement rules meant that Caribbean states, along with Pacific and African countries whose economies would also be affected, were limited to the role of interested third parties, and were not principal disputants. See Understanding on Rules and Procedures Governing the Settlement of Disputes, World Trade Organization Agreement, Annex 2, art. 10, 33 I.L.M. 1130 (1994) [hereinafter Dispute Settlement Understanding], [http://www.wto.org/english/docs\\_e/legal\\_e/28-dsu.pdf](http://www.wto.org/english/docs_e/legal_e/28-dsu.pdf). Several CARICOM Member States were named third parties to the dispute. See *Key European Communities*—

fight against drug trafficking<sup>65</sup> brought home the comparative ineffectiveness of the islands' exercise of sovereignty.<sup>66</sup>

If one analogizes the attributes of sovereignty to the proverbial "bundle" of property rights, the Caribbean island states retain the aspects of sovereignty arising from the primacy of territoriality, including the power to confer or withhold citizenship,<sup>67</sup> to pass and enforce domestic legislation to enforce internal order,<sup>68</sup> to

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*Regime for the Importation, Sale, and Distribution of Bananas*, WT/DS27, [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds27\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm) (listing Dominica, Grenada, Jamaica, St. Lucia, St. Vincent, and Suriname among the twenty named third parties). Although Article 10, paragraph 4 of the Dispute Settlement Understanding provides that:

if a third party considers that a measure already the subject of a panel proceedings nullifies or impairs benefits accruing to it under any covered agreement, that Member may have recourse to normal dispute settlement procedures under this Understanding . . .

and that "[s]uch a dispute shall be referred to the original panel wherever possible." None of the CARICOM Member States nor the other African-Caribbean-Pacific countries have requested separate consultations addressing the impact of the Banana Dispute on their economies. [http://www.wto.org/english/tratop\\_e/dispu\\_subjects\\_index\\_e.htm](http://www.wto.org/english/tratop_e/dispu_subjects_index_e.htm) (follow "bananas" hyperlink) (showing that none of the aforementioned countries have requested consultations regarding the subject of bananas).

<sup>65</sup> See Clarke, *supra* note 15 (describing the Shiprider Agreements).

<sup>66</sup> It may be true, however, that in this era of globalization, even developed countries are not absolute masters of their destiny. In particular, the movements of capital and corporate international activities appear to have escaped nation-state control. See, e.g., Clive Y. Thomas, *Caribbean Economic Integration: Challenges and the Way Forward*, THE INTEGRATIONIST, July 2002, at 20, 21 ("Thus in recent years we have witnessed a situation in [developed] countries in which 1) large corporations and financial institutions are able to control funds and resources on such a scale, and 2) the simultaneous promotion of mass instantaneous cross-border communications, that *these factors have combined to reduce the capacity of their National Authorities to control or limit them.*" (emphasis added)); see also Henkin, *supra* note 44, at 6-7:

There is growing, though grudging, realization that world economic affairs, world communications, and . . . world politics, are no longer cabined within the state system. And suddenly, or perhaps slowly, the realization is sinking in that sovereignty has lost its nerve, and sovereign states have realized that they are losing their control, that the state system is losing control.

<sup>67</sup> For example, the Restatement (Third) of Foreign Relations explains the mechanisms through which an individual is entitled to or may acquire citizenship of the United States. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS §212 (1987); see also RESTATEMENT (THIRD) OF FOREIGN RELATIONS §213 (1987) (regarding the conferral of citizenship by states).

<sup>68</sup> JOSEPH CAMILLERI ET AL., THE END OF SOVEREIGNTY 17-18 (1992).

raise an army,<sup>69</sup> and to issue currency. Other externally directed threads of the bundle are more frayed, conveying little power to affect the fate of the island states, such as the right to refuse to accept “deportees”—long-gone citizens expelled from the United States—for criminal activities, to police their territorial waters for drug smugglers and illegal fishing activity, to intervene in the chaotic political turmoil of a neighboring state,<sup>70</sup> and to control their economic future without direction from outsiders.

Louis Henkin’s observations on the effects of the myth of sovereignty are particularly apt in the context of Caribbean regional integration:

Cooperation by “sovereign” states did not come easily, and it continues to be difficult. I blame the delusions and *mythology* of sovereignty for the failure of states to collaborate more extensively. *Sovereignty does not encourage cooperation; it breeds “going it alone.”* We have had some cooperation, but it has been limited in the name of sovereignty . . . limited, not only in achievement but even in aspiration, by a persistent addiction to this notion of sovereignty.<sup>71</sup>

Caribbean academics and politicians have pointed out the hurdle presented by the region’s concept of sovereignty and urged that it be overcome. For example, Professor Vaughan Lewis<sup>72</sup> discusses the region’s failure to develop a system of supranational regional governance, while noting that notions of sovereignty are more difficult to hold onto within the Caribbean:

This [supranational] notion of governance has tended to be resisted in the Caribbean region, as a result of strongly held notions of sovereignty over difference [*sic*] spheres of government, even as in many of the larger states of the region it is difficult, after the ravages of recession, to identify meaningful areas of autonomy in decision-making.<sup>73</sup>

Owen Arthur, Prime Minister of Barbados, has noted that the

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<sup>69</sup> See Paul W. Kahn, *The Question of Sovereignty*, 40 STAN. J. INT’L L. 259, 273 (2004).

<sup>70</sup> The unrest in Haiti is an example.

<sup>71</sup> Henkin, *supra* note 44, at 3 (emphasis added).

<sup>72</sup> Professor Lewis is the head of the Institute of International Relations, University of the West Indies, located in St. Augustine, Trinidad.

<sup>73</sup> Lewis, *supra* note 56, at 342.

success of the CSME will depend on a change in the way the regional integration endeavour is structured:

[the Caribbean] conceives of (itself) mainly as a community of sovereign states in which sovereignty is pooled *but never ceded*; with the nation-state being the locus of decision-making in respect of the implementation of regional commitments.<sup>74</sup>

The reluctance to concede that sovereignty is evident in the institutional structure and framework of the Community.<sup>75</sup>

Even if full integration were achieved, the real scope of the pooled sovereignty of the regional grouping would perhaps not attain the mythical characteristics desired by its members. A group of fifteen relatively small states with a total population of 14 million creates only a comparatively small market with limited influence in the global community.<sup>76</sup>

#### *D. Aspirational Economic Integration*

"Economic integration" as used in this paper evokes the integration achieved through the creation of a single economic space—federal systems such as Canada or the United States—or that toward which the European Union has made significant strides.<sup>77</sup> The Caribbean Single Market and Economy (CSME) is a principal goal of CARICOM.<sup>78</sup> However, in the Caribbean (and CARICOM) context, such deep and broad integration remains "aspirational," an ideal invoked in speeches, treaties and conferences, but toward which only halting progress has been

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<sup>74</sup> See David Jessop, *Caribbean Should Follow EU's Lead*, THE JAMAICA OBSERVER INTERNET EDITION, [http://www.jamaicaobserver.com/columns/html/20031220t220000-0500\\_53290\\_obs\\_caribbean\\_should\\_follow\\_eu\\_s\\_lead.asp](http://www.jamaicaobserver.com/columns/html/20031220t220000-0500_53290_obs_caribbean_should_follow_eu_s_lead.asp) (quoting Prime Minister Owen Arthur) (emphasis added).

<sup>75</sup> See *infra* Part V for detailed discussion.

<sup>76</sup> Also worth asking is the question: Does separate sovereignty lead to greater flexibility, nimbleness, and experimentation in reaction to future crises, giving the Member States the ability to react more swiftly to such crises? This question, beyond the scope of this Article, may be explored elsewhere.

<sup>77</sup> See, e.g., Craig Jackson, *Constitutional Structure and Governance Strategies for Economic Integration in Africa and Europe*, 13 TRANSNAT'L L. & CONTEMP. PROBS. 139, 142 (2003).

<sup>78</sup> See Revised Treaty, *supra* note 25. The second paragraph of the Preamble describes the CSME, and the CSME is mentioned in ten of the twenty-nine paragraphs of the Preamble.



made.<sup>79</sup>

Aspirational economic integration in the Caribbean is characterized by: (1) maintenance of Member State governmental control of desired integration; (2) the refusal to concede meaningful aspects of state sovereignty to facilitate the purposes of the regional organization; (3) the absence from constitutive documents of the regional organization of the basic minima necessary for economic integration;<sup>80</sup> (4) the failure to create a supranational body with the power to drive the integration process; (5) creation of a decision-making procedure that facilitates deadlock and halting progress; (6) a weak enforcement mechanism that favors delay and non-implementation; and (7) lack of meaningful involvement of the Member States in the integration process.

All of the foregoing characteristics are manifested in the CARICOM model of economic integration.

#### IV. CARICOM: Why, When, How

The West Indian Federation was a failed experiment in political integration imposed by the United Kingdom on its former colonies as they crept toward independence.<sup>81</sup> From its ashes were created the Caribbean Free Trade Association<sup>82</sup> and its successor, CARICOM.<sup>83</sup> The 1973 Treaty of Chaguaramas Establishing the

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<sup>79</sup> See, e.g., Smith, *supra* note 1. For example, while the Revised Treaty terms refer to a single market, they maintain the barriers between Member States that are no different from the 1973 Treaty's Common Market. See Brewster, *supra* note 16.

<sup>80</sup> For example, in the Caribbean context, the freedom of movement of labor, a fundamental unit of production, is limited. See *infra* Part VI for discussion.

<sup>81</sup> See Mullerleile, *supra* note 50, for background on the formation of the Federation, and the political and social trends that lead to its creation and collapse; see also Menon, *supra* note 53, at 88-93 ("The federation was something of a *tour de force*; it was imposed externally 'as a primary means of advancing metropolitan colonial goals rather than assisting its West Indies colonies to achieve viable independent nationhood . . .'" (footnotes omitted; quoting W. Marvin Will, *A Nation Divided: The Quest for Caribbean Integration*, 26 (2) LAT. AM. RES. REV., 3, 10 (1991)).

<sup>82</sup> The Dickenson Bay Agreement (1965) among Antigua, Guyana (then British Guiana), and Barbados established the Caribbean Free Trade Association. See Agreement Establishing the Caribbean Free Trade Association, *reprinted in* Pollard, *supra* note 8, at 51.

<sup>83</sup> The 1973 Treaty of Chaguaramas was spearheaded by regional political leaders. See Pollard, *supra* note 8, at 6.

Caribbean Community and Common Market was executed at Chaguaramas, Trinidad, on July 4, 1973 and came into force on August 1, 1973.<sup>84</sup> Recognizing the limitations of the small size and underdevelopment of the former British colonies, the aim of the founders of the Community was to create a forum for integration for the English-speaking Caribbean countries.<sup>85</sup> With the memberships of Suriname and Haiti, the Community created a natural market of 14 million people.<sup>86</sup>

A. *1973 Treaty of Chaguaramas*

The Preamble to the 1973 Treaty<sup>87</sup> evokes the consolidation and strengthening of the historic bonds among the peoples of the contracting states, the people's hopes and aspirations for full employment and improved standards of living, the consciousness that those objectives could be best achieved through accelerated and sustained economic activity, and awareness of the need to design an effective regime to achieve those goals. Article 4 of the treaty states the three main objectives (or pillars) of the Community: (1) economic integration; (2) foreign policy coordination; and (3) functional co-operation. The most fully elaborated of these is economic integration.<sup>88</sup> The desired benefits of integration include both: (1) the elimination of duplicative governance and bureaucratic systems and (2) accelerated

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<sup>84</sup> See 1973 Treaty, *supra* note 11.

<sup>85</sup> See Trevor Farrell, *Five Major Problems for CARICOM in BEYOND SURVIVAL*, *supra* note 15, at 8, 11-12.

<sup>86</sup> Edwin W. Carrington, Secretary General of the Caribbean Community, U.S. & Caribbean Trade Linkages: Fostering Partnerships For the 21st Century (Apr. 22, 1999), <http://www.caricom.org/jsp/speeches/speech1.htm>. This may be contrasted to the size of the market created by the formation of the European Community and later European Union, which expanded to 470 million citizens upon the accession of 10 new members on May 1, 2004. Marian L. Tupy, *EU Enlargement Cost, Benefit, and Strategies for Central and Eastern European Countries*, 489 POL'Y ANALYSIS 2 (Sept. 18, 2003), <http://www.cato.org/pubs/pas/pa489.pdf>.

<sup>87</sup> Although the 1973 Treaty will be superseded by the Revised Treaty upon ratification by the required number of states, the Preamble and some other aspects of the 1973 Treaty will be discussed as they form the kernel for goals of the Community, embodying the aspirations of the Member States. Further, as the Revised Treaty has not yet been ratified, while the Member States of the Community work toward its implementation, both treaties merit consideration and analysis.

<sup>88</sup> See 1973 Treaty, *supra* note 11, art. 4(a)(i)-(iii).

economic development through increased intra-regional and external trade, via greater competitiveness of local producers and service providers vis-à-vis the rest of the world.<sup>89</sup>

The structure of CARICOM and its division into Community and Common Market,<sup>90</sup> however, reveals a historic lack of consensus among the Member States.<sup>91</sup> The separation into these two somewhat symbiotic entities was meant to facilitate the accession to membership in the Community by both those countries who were prepared to participate in the Common Market and those who were not.<sup>92</sup> However, membership in the Common Market was made contingent on participation in the Community,<sup>93</sup> thus creating an incentive to join CARICOM and decreasing the opportunity to free-ride by joining the Common Market only.<sup>94</sup>

In reaction to fundamental and wide-ranging developments on the international scene, such as the collapse of the Soviet Union and the creation of the European Union, the leadership of CARICOM realized that the organization needed to re-position and re-constitute itself if it were to be a true agent for Caribbean development through integration.<sup>95</sup>

In 1991, the West Indian Commission was "established by the CARICOM heads of Government to help the people of the West Indies prepare for the twenty-first century."<sup>96</sup> Constituted as an independent body, the Commission was charged with formulating proposals to further the goals of the 1973 Treaty and to submit its

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<sup>89</sup> The increase in the market available to local manufacturers is expected to make them more efficient through economies of scale, and thus more competitive in relation to external producers. See, e.g., Blake, *supra* note 22.

<sup>90</sup> The Community's role was to fulfill the functional and foreign policy coordination goals of the 1973 Treaty, while the Common Market would drive the economic integration of the Member States.

<sup>91</sup> Pollard, *supra* note 8, at 6.

<sup>92</sup> *Id.* at 7.

<sup>93</sup> *Id.* at 6-8.

<sup>94</sup> There were indications that Jamaica was more interested in the economic potential of the Common Market than in being a member of the Community. However, due to the linked structure, only The Bahamas chose to join the Community, but not the Common Market. *Id.* at 7.

<sup>95</sup> *Id.* at 21-22; see also Blake, *supra* note 22.

<sup>96</sup> THE WEST INDIAN COMM'N, TIME FOR ACTION: REP. OF THE WEST INDIAN COMM'N 4 (1992) [hereinafter COMMISSION REPORT].

report to the July 1992 Heads of Government meeting.<sup>97</sup> In 1992, following well-documented consultations with people and institutions throughout the Caribbean and among the West Indian diaspora in the United States and United Kingdom, the Commission issued six key recommendations for adoption and guidance for the Community.<sup>98</sup> The recommendations were summarized as follows:

1. Permit West Indians to travel in their Region with the freedom and ease due to them as citizens of a nation common to all—and encourage exchange visits, especially among young people.
2. Allow West Indian graduates of UWI<sup>99</sup> (and other institutions to be identified) and media people to work and live freely anywhere in the Region as a first step to permitting the free movement of skilled people within the Region.
3. Take the first concrete steps—which the Progress Report defined—towards establishing an independent Caribbean Monetary Authority and a common currency.
4. Launch a Caribbean Investment Fund of US\$50-70 million to invest in the Region's stock markets. The Progress Report set out a specific proposal for launching the Fund.
5. *Complete as a matter of urgency—and setting aside all delaying argument—the CARICOM Single Market* with its three principal instruments: the Common External Tariff, the Harmonized Scheme of Fiscal Incentives, and the Rules of Origin.
6. Mobilize CARICOM to have a single negotiating posture and a single voice for international negotiations vital to our common interests.<sup>100</sup>

However, although those principal recommendations were timely accepted for action,<sup>101</sup> domestic implementation of the necessary foundations of economic integration still lags.

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> The University of the West Indies.

<sup>100</sup> COMMISSION REPORT, *supra* note 96, at 6 (emphasis added). According to the Commission Report, "[a]ll six recommendations were accepted for 'immediate' action." *Id.* at 7.

<sup>101</sup> *Id.*

### *B. Revised Treaty of Chaguaramas — 2001*

Arising directly from the Recommendations of the Commission and the Heads of Government agreement to revise the 1973 Treaty, the Revised Treaty of Chaguaramas (“Revised Treaty”) was born in 2001, aimed at radically transforming CARICOM as an institution by fusing “the political and economic dimensions of the Caribbean Community and Common Market”<sup>102</sup> with “a fundamental transformation and restructuring of the Caribbean Community from a conservative, inward-looking, protectionist, functionally constrained organisation to an open liberalised, efficient, internationally competitive, outward-looking and deliberately flexible institution.”<sup>103</sup>

The Preamble to the Revised Treaty is a sprawling affair, focused on macroeconomic visions and encompassing such wide-ranging issues as, among other things, the international competitiveness demanded by the process of globalization; the need to enhance the participation of the Caribbean people<sup>104</sup> and social partners; the requirement of “structured integration of production[s]” and free movement of capital, labor, and technology for optimal performance by Caribbean enterprises; and the need for joint action with respect to international and intraregional trade.<sup>105</sup> The Revised Treaty expands the objectives of the Community, maintaining the Member States’ economic development focus,<sup>106</sup> while the Community is re-structured to eliminate the separate though symbiotic legal existence of the Community and the Common Market into a unitary entity.<sup>107</sup>

Although integration efforts in spheres, such as education and

<sup>102</sup> Pollard, *supra* note 8, at 23.

<sup>103</sup> *Id.* at 459. However, three years later the Revised Treaty had not yet entered into force, as the Community awaited Montserrat’s ratification. See *Senate Passes Bill to Repeal Common Market Act*, THE JAMAICA OBSERVER INTERNET EDITION, [http://www.jamaicaobserver.com/news/html/20040330t200000-0500\\_57906\\_obs\\_senate\\_passes\\_bill\\_to\\_repeal\\_common\\_market\\_act.asp](http://www.jamaicaobserver.com/news/html/20040330t200000-0500_57906_obs_senate_passes_bill_to_repeal_common_market_act.asp). By its terms the Treaty will enter into force upon ratification and deposit with the Secretariat by all Member States. See Revised Treaty, *supra* note 25, art. 233-34.

<sup>104</sup> But see *infra* Part VI for discussion.

<sup>105</sup> See generally Revised Treaty, *supra* note 25, Preamble.

<sup>106</sup> See *id.* at art. 6 (a)-(g).

<sup>107</sup> See *id.* at art. 1 (“‘Community’ means the Caribbean Community established by Article 2 and includes the CSME established by the provisions of this Treaty.”).

health have been successful, CARICOM appears to have failed in its economic integration attempts.<sup>108</sup> Throughout CARICOM's thirty-year history, intra-Community trade has failed to increase substantially.<sup>109</sup> Moreover, the much-heralded CSME is still not a reality, as several of the CARICOM Member States have not implemented the requisite domestic legislation.<sup>110</sup> This failure defies the Revised Treaty's General Undertaking on Implementation clause.<sup>111</sup> In addition, one may debate whether the mechanisms adopted in furtherance of creating the CSME are adequate to the task of fulfilling the drafters' apparent

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<sup>108</sup> For example, the venerable University of the West Indies system has been gathered under CARICOM's auspices and the Caribbean Examination Council successfully introduced the CXC exam, a Caribbean-wide high school certification that is accepted and well regarded in tertiary institutions throughout the world. *See* Pollard, *supra* note 8, at 19, 144.

<sup>109</sup> *See, e.g.,* Anthony Gonzales, *Caribbean Integration in the Next Decade: A Strategic Vision for the New Millennium*, in *BEYOND SURVIVAL*, *supra* note 15, at 631; *see also* Brewster, *supra* note 16 ("[A]fter 30 years of the Community's existence, intra-regional exports amount (in 2000) to only 28 percent of total regional exports, having increased from 11.5 percent in 1990."). *See also* Prof. Compton Bourne, President Caribbean Dev. Bank, a Caribbean Community for All, Lecture in the Distinguished Lecture Series: Celebrating the Thirtieth Anniversary of the Caribbean Community (June 25, 2003), [http://www.caricom.org/jsp/community/regional\\_issues/30anniversarylecture5-bourne.pdf](http://www.caricom.org/jsp/community/regional_issues/30anniversarylecture5-bourne.pdf).

<sup>110</sup> *See* Rickey Singh, *Hot Political Agenda Awaits Caricom Heads*, THE JAMAICA OBSERVER INTERNET EDITION, [http://www.jamaicaobserver.com/columns/html/20040320t200000-0500\\_57421\\_obs\\_hot\\_political\\_agenda\\_awaits\\_caricom\\_heads.asp](http://www.jamaicaobserver.com/columns/html/20040320t200000-0500_57421_obs_hot_political_agenda_awaits_caricom_heads.asp). ("It is also my understanding that, for all their rhetoric about 'advancing arrangements' a number of community governments are yet to introduce the relevant legislation in their parliament to help make the CSME a reality."). Singh also describes trade-related tensions between Member States Barbados and Trinidad & Tobago. The delay is not new. *See, e.g.,* RE-INVENTING CARICOM: THE ROAD TO A NEW INTEGRATION 298-99 (Kenneth Hall ed., 2d ed. 2003) (noting that while the "CSME is now a major pre-occupation of CARICOM" the deadline for implementation continues to be pushed backward and more than a decade after the Community's determination to create the CSME, it was still not a reality).

<sup>111</sup> *See* the Revised Treaty, *supra* note 25, art. 9.

Member States shall take all appropriate measures, whether general or particular, to ensure the carrying out of obligations arising out of this Treaty or resulting from decisions taken by the Organs and Bodies of the Community. They shall facilitate the achievement of the objectives of the Community. They shall abstain from any measures which could jeopardise the attainment of the objectives of this Treaty.

aspirations.<sup>112</sup>

The formation of the Regional Negotiation Machinery (RNM)<sup>113</sup> has brought some coherence to the international relations of the Member States. The RNM has taken the lead in FTAA and WTO negotiations, as well as bilateral negotiations with potential Community partners.<sup>114</sup> Nevertheless, on the coordination of the foreign relations front, in 2004 CARICOM failed in its efforts to stimulate a U.N.-led multilateral intervention in Haiti, as that Member State devolved into its latest political crisis.<sup>115</sup>

Does the comparatively small size of the CARICOM market create an insurmountable obstacle to integration and effective economic development? Given the similarity of the goods and services produced in the islands, there is a fundamental question whether the Caribbean nation states create a natural market for each others' goods and services. It may be argued that this reality is a flaw at the center of the CSME, an argument that has, in part, stimulated the attempts to widen the engagement of the Community with other Caribbean countries. For example, the original membership of formerly British colonies has been widened to include Suriname and Haiti, neither of which are English-speaking; in addition, the Community was an integral

<sup>112</sup> For example, the Revised Treaty provides for only limited free movement of the Member States' citizens. See *infra* Part VI for discussion.

<sup>113</sup> The RNM is headed by a Chief Negotiator, whose team collaborates with the CARICOM administration. The machinery collaborates with the Community structures, and provides a group of negotiators for each negotiation in which the Community is involved. See Arnold McIntyre, *The Caribbean Community and External Negotiations in BEYOND SURVIVAL*, *supra* note 15, at 681, 685.

<sup>114</sup> See Christopher P. Malcolm, *Caribbean Integration within the CARICOM Framework: The Socio-Historical, Economic, and Political Dynamics of a Regional response to a Global Phenomenon*, 10 L. & BUS. REV. AM. 35 (2004).

<sup>115</sup> See, e.g., *Aristide Visit Triggers Row*, *supra* note 6. The United Nations Stabilization Mission in Haiti (MINUSTAH), which arrived some time after Aristide's departure, will, with the addition of a further 1,000 peacekeepers authorized by the UN Security Council, number 8,500. See *UN Peacekeeping Chief: Haiti Worse Than Darfur*, HAITI NEWS, [http://www.haiti-news.com/article.php?id\\_article=3819](http://www.haiti-news.com/article.php?id_article=3819). Despite the presence of the troops, the situation in Haiti continues to deteriorate. See *Haiti Leader Asks for Tougher UN Peacekeeping Mandate*, VOICE OF AMERICA NEWS, June 7, 2005, <http://www.voanews.com/english/2005-05-07voa110.cfm>. See also Ginger Thompson, *A New Scourge Afflicts Haiti: Kidnappings*, N.Y. TIMES, June 6, 2005, at A1, <http://www.nytimes.com/2005/06/06/international/americas/06haiti.html>.

player at the forefront of stimulating the formation of the Association of Caribbean States (ACS), whose purpose is to increase *cooperation and coordination* in the Caribbean basin—as compared to CARICOM's push toward *integration*.<sup>116</sup>

Other significant challenges include: the geographical dispersal and the non-contiguity of the Member States, the poverty and underdevelopment of the Member States, and the disparity in geographic and population sizes of the Member States, with the attendant fears that smaller Member States will be overwhelmed by the more economically dominant ones.<sup>117</sup> In addition, the question of whether economic integration, in and of itself, will bring the development benefits that are expected of it remains unanswered.

Given acknowledgement of the challenges faced by the Caribbean states,<sup>118</sup> questions remain whether the economic integration of the Community has been delayed by a dearth of imagination on the part of its leaders, who dared not go to where their people begged them.<sup>119</sup> Was it the fear of taking the bold steps that would have demanded the concession of some part of sovereignty to be pooled to create a locus of strength in the region?<sup>120</sup> The most immediate challenges now faced by the organization are created by the constraints and opportunities posed by globalization and the forced liberalization of markets with its

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<sup>116</sup> See Convention Establishing Association of Caribbean States, Preamble, <http://www.acs-aec.org/convention.htm#PREAMBLE>. The membership of the ACS includes the CARICOM Member States as well as all the countries (other than the United States) whose shores are washed by the Caribbean sea. This includes, Colombia, Mexico, Nicaragua, Guatemala, the Netherlands Antilles, and El Salvador; while associate membership is available to non-independent entities (such as Anguilla and Montserrat) in the Caribbean Basin. See *id.* Annex II.

<sup>117</sup> *Antigua-Barbuda Pushes for Special Treatment for OECS States*, CARIB. NET NEWS, July 6, 2005, <http://www.caribbeanetnews.com/2005/pushes.shtml>.

<sup>118</sup> See *supra* Introduction.

<sup>119</sup> See, e.g., COMMISSION REPORT, *supra* note 96, at 11-17 (discussing widespread support for greater regional integration among the Commission's respondents and interviewees).

<sup>120</sup> That the island nations' closely guarded sovereignty is more mythic than real is exemplified by the Shiprider Agreements, Clarke, *supra* note 15, and accompanying text, as well as CARICOM's inability to invite Cuba to join the Community. See Michael Wallace Gordon, *The Wild Card in the Caribbean—Cuba*, 5 NAFTA: L. & BUS. REV. AM. 278, 287-88 (1999).



attendant dislocations. These challenges are embodied in the opportunities and risks presented by the United States' proposal for a Free Trade Area of the Americas (the FTAA), in which both CARICOM and the ACS participate, and the sub-regional trading agreements that the United States has spearheaded as an alternative to the stalled FTAA negotiations.<sup>121</sup>

After fifteen years of delay, the CSME was finally scheduled for launch in January 2005,<sup>122</sup> but was re-scheduled for January 1, 2006.<sup>123</sup> Some regional commentators presciently expressed doubt that the January 1, 2006, launch would take place, pointing to delays such as the upheaval caused in the region by the devastating 2004 hurricane season.<sup>124</sup> The Member States appear to be committed to the launch, and have undertaken measures<sup>125</sup> to bring the CSME to fruition. Despite that public show of commitment, several fundamental prerequisites remain to be implemented. For example, the Revised Treaty applies to only ten of the fifteen Member States;<sup>126</sup> the Bahamas has entered a

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<sup>121</sup> The FTAA negotiations appear to be stalled. Begun in 1994, negotiations have continued over the past 10 years, with a stated deadline of January 2005. However, the differences in negotiating positions appear to have increased instead of declining over the 11-year negotiation period. See Global Exchange FTAA Frequently Asked Questions: What Is the Current Status of the FTAA Negotiations?, Apr. 1, 2005, <http://www.globalexchange.org/campaigns/ftaa/faq.html#1>. The Central American Free Trade Area Agreement (CAFTA), signed by the United States, the Dominican Republic, and certain Central American countries, was approved by the United States Congress in July 2005. The United States is also pursuing regional agreements with the sub-regional Andean Group, with the latest round of negotiations taking place in Miami during July 2005. See *Negotiators Arrive in Miami for U.S.-Andean Trade Talks*, S. FLA. BUS. J., July 20, 2005, [http://www.bizjournals.com/southflorida/stories/2005/07/18/daily45.html?from\\_rss=1](http://www.bizjournals.com/southflorida/stories/2005/07/18/daily45.html?from_rss=1).

<sup>122</sup> See Singh, *supra* note 17.

<sup>123</sup> See CARICOM Single Market and Economy, CARICOM NEWS, [http://www.jis.gov.jm/special\\_sections/CARICOMNew/CSME1.html](http://www.jis.gov.jm/special_sections/CARICOMNew/CSME1.html).

<sup>124</sup> *Id.* The Judicial Committee of the Privy Council of the United Kingdom has since found unconstitutional the legislation enacted by Jamaica to institute the Caribbean Court of Justice. See *infra* note 230.

<sup>125</sup> Including the ratification of the Revised Treaty by all Member States other than Dominica. See Establishment of the CARICOM Single Market and Economy: Summary of Status of Key Elements, Aug. 10, 2005, [http://www.caricom.org/jsp/single\\_market/csmekeyelements.pdf](http://www.caricom.org/jsp/single_market/csmekeyelements.pdf).

<sup>126</sup> *Id.* at 1.

reservation with respect to the CSME;<sup>127</sup> and discriminatory barriers to the movement of goods, services, and people have not been removed from the domestic laws of the Member States.<sup>128</sup>

## V. The Many-Headed Hydra

The privilege of sovereignty, and efforts to guard it, have led to the construction of an organizational structure lacking in cohesion and supranational scope, bereft of ability or power to enforce Member State implementation of the common market. A striking feature of the CARICOM structure is the deliberate diffusion of authority and competence<sup>129</sup> among a multiplicity of Organs, Bodies, Institutions, and Associate Institutions.<sup>130</sup> This system suffers from a weak dispute settlement mechanism and the foreclosure of participation by citizens of the Community.

Owen Arthur, Prime Minister of Barbados, clearly describes the viewpoint that underlies the institutional structure of CARICOM,

The institutional, the legal and the economic instruments that gave effect to the CSME<sup>131</sup> have . . . been designed to take effect through intra-governmental cooperation of a kind that *avoids any infringement of national sovereignty*.<sup>132</sup>

The institutional design of CARICOM has a number of consequences. For example, the diluted power of the Community organizational structure, including the decentralization of decision-making authority within the organization and the husbanding of initiative within the Heads of Government Conference, means that the institutional structure undermines its effectiveness. Since the functional consequences of the chosen

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<sup>127</sup> See Pollard, *supra* note 8, at 460.

<sup>128</sup> *Id.* Indeed the October 2004 table issued by the Secretariat reveals that in virtually none of the categories listed have *all* Member States undertaken the domestic legislative implementation required to create the single economic space (the much-vaunted CSME).

<sup>129</sup> The term "competence" is used here to refer to the jurisdiction to act within a specific sphere.

<sup>130</sup> The Revised Treaty does not explain the meaning or import of the distinctions among Organs, Bodies, Institutions, and Associate Institutions.

<sup>131</sup> And, I posit, the Community as a whole.

<sup>132</sup> Owen Arthur, Prime Minister of Barbados (emphasis added). See Jessop, *supra* note 74.

structure are clear, and the Member States had some eighteen years of experience of working together under the 1973 Treaty at the time of the drafting of the Revised Treaty, the structure clearly demonstrates a compromise amongst the Member States between deference to sovereignty and effective implementation of CARICOM goals. That compromise leans heavily in favor of deference to Member State conceptions of sovereignty.

While an explicit reference is never made to the European Union in CARICOM's constitutive documents, its influence is apparent in some provisions of the Revised Treaty. For example, Article 214, Referral to the Court, is clearly inspired by Article 234 of the Treaty of European Union,<sup>133</sup> which allows the domestic courts of Member States of the Union to request interpretation by the European Court of Justice (ECJ) of issues of

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<sup>133</sup> Article 234 of the Consolidated Version of the Treaty Establishing the European Communities reads:

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community and of the ECB;
- (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

Consolidated Treaty, *supra* note 30, art. 234.

In comparison, Article 214 of the Revised Treaty reads:

Where a national court or tribunal of a Member State is seised of an issue whose resolution involves a question concerning the interpretation or application of this Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment.

Revised Treaty, *supra* note 25, at art .214.

However, the mandatory call for referral in the European Union context has been weakened by the Revised Treaty to give more deference to the national courts. Only time and experience will reveal whether deference in this case may stem from the suspicion with which some of the Caribbean population perceives the establishment of the new court.

Community law applicable to cases before them. Therefore, it is not unreasonable to state that the drafters and Member States, after studying the constitutive documents of the European Union, rejected that entity's effective organizational choices and chose provisions<sup>134</sup> with clear disadvantages in the area of functional effectiveness.

### *A. Description of Institutional Structure*

The Revised Treaty creates two Principal Organs (the Conference of Heads of Government and the Community Council of Ministers) and four functional organs (the Council for Finance and Planning (COFAD), the Council for Trade and Economic Development (COTED), the Council for Foreign and Community Relations (COFCOR), and the Council for Human and Social Development (COHSOD)<sup>135</sup> (together, the Ministerial Councils)). In addition, the Secretariat is the administrative center of the organization, while there is a plethora of satellite Institutions and associate Institutions.

#### *1. Organs*

##### *a. Heads of Government Conference*

###### *i. Composition, Competence and Powers*

Composed of the Member States' heads of government,<sup>136</sup> the Conference of Heads of Government is the "supreme Organ of the Community"<sup>137</sup> with power to determine and provide policy direction of the Community,<sup>138</sup> enter into treaties, establish Community Organs or Bodies, and make decisions regarding the financial affairs of the Community.<sup>139</sup> In addition, the Bureau

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<sup>134</sup> It need not be stated that drafters ought not to slavishly copy the text of documents used as inspiration for drafting. The point made here is that, rather than adapting successful features to affect CARICOM's stated goals, the drafters and Member States rejected them wholesale.

<sup>135</sup> Revised Treaty, *supra* note 24, art. 10. See also arts. 21-23.

<sup>136</sup> Revised Treaty, *supra* note 25, art. 11, ¶ 1.

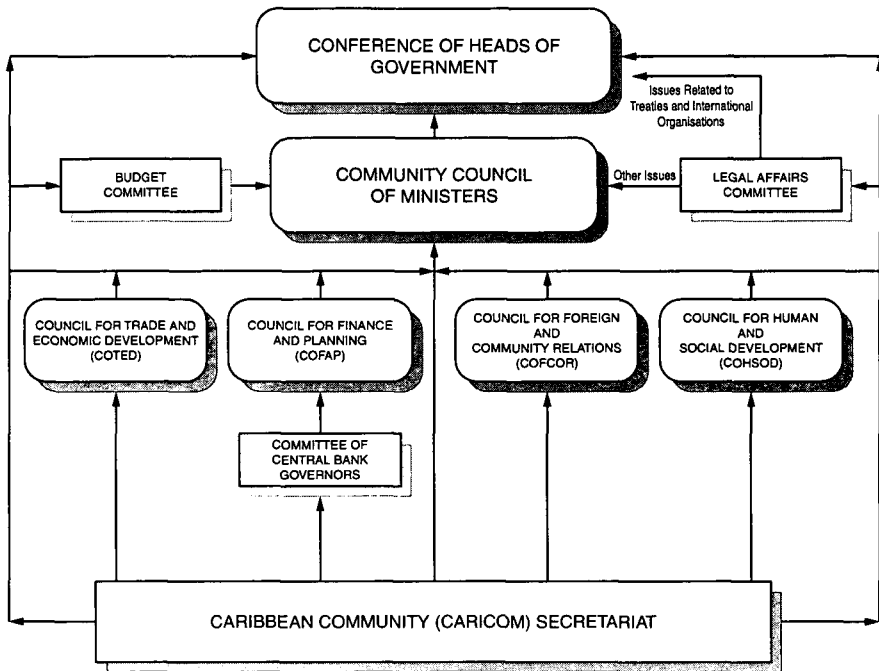
<sup>137</sup> *Id.* art. 12, ¶ 1.

<sup>138</sup> *Id.* art. 12, ¶ 2.

<sup>139</sup> *Id.* art. 12, ¶ 4-6.

“consisting of the current and immediately outgoing and incoming Chairmen of the Conference”<sup>140</sup> performs additional functions of giving policy guidance to the Secretariat, facilitating implementation of Community decisions “updating Member State guidance and initiating proposals for development and approval by the Ministerial Councils.”<sup>141</sup>

**Figure 1: Functional Relationship of the Organs and Bodies of the Caribbean Community**<sup>142</sup>



<sup>140</sup> Revised treaty, *supra* note 25, art. 12, ¶ 11. The mechanism for appointment or election of the chairman of the Conference is not specified in revised treaty, which reserves to the Conference the power to regulate its own procedure. *Id.* art. 12, ¶ 10.

<sup>141</sup> *Id.* art. 12, ¶ 11.

<sup>142</sup> CARICOM, The Community and Common Market: Structure of the Community, <http://www.caricom.org/jsp/archives/comstrgf.htm>.

*ii. Voting*

Each Member State has one vote in all Community Organs and Bodies.<sup>143</sup> Voting in the Conference to create binding decisions is by unanimity.<sup>144</sup> Abstentions do not impair the binding nature of the procedural validity of the vote, so long as 75% of the Community membership votes in favor of the decision.<sup>145</sup>

*b. Community Council of Ministers<sup>146</sup>**i. Composition and Powers*

The Council of Ministers is the second highest organ in the Community, consisting of Member State ministers responsible for Community Affairs and any other minister that a Member State may designate in its discretion.<sup>147</sup> The Council has primary responsibility for Community strategic planning and for coordinating the three pillars of the Community—economic integration, functional cooperation, and external relations.<sup>148</sup> These responsibilities include the approval of programs emanating from other Community Organs, and the Council has the power to amend or request changes to proposals submitted by Ministerial Councils.<sup>149</sup> The Council also controls budget approval, resource mobilization, and allocation and serves as a preparatory body for meetings of the Conference.<sup>150</sup> By delegation from the Conference, the Council issues directives to both the Organs and the Secretariat, and has further responsibility for the promotion, enhancement, monitoring, and evaluation of regional and national implementation processes.<sup>151</sup>

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<sup>143</sup> *Id.* art. 27, ¶ 1.

<sup>144</sup> *Id.* art. 28, ¶ 1.

<sup>145</sup> *Id.* art. 28, ¶ 2.

<sup>146</sup> *Id.* art. 13.

<sup>147</sup> *Id.* art. 13, ¶ 1.

<sup>148</sup> *Id.* art. 13, ¶ 2.

<sup>149</sup> *Id.* art. 13, ¶ 3.

<sup>150</sup> *Id.* art. 13, ¶ 4.

<sup>151</sup> *Id.*

c. *Ministerial Councils*

i. *Composition, Competence, and Function*

Each of the following is composed of the national ministers of Member States responsible for those portfolios within individual Member States:<sup>152</sup> the Council for Finance and Planning (COFAP), the Council for Trade and Economic Development (COTED), the Council for Human and Social Development (COHSOD), and the Council for Foreign and Community Relations (COFCOR).<sup>153</sup> In addition, Member States may designate alternate representatives to each of the Councils.<sup>154</sup> The responsibilities of each of the four Ministerial Councils are primarily the promotion, collaboration, and coordination of Community Member States with respect to programs falling under their titles.<sup>155</sup> And, in particular, COTED is responsible for the “promot[ion of] the development and oversee[ing] the operation of the CSME.”<sup>156</sup>

ii. *Voting*

Voting in the Council of Ministers and in the Ministerial Councils is by qualified majority—that is, an affirmative vote of no less than 75% of the Member States<sup>157</sup>—unless the subject issue is of “critical importance to the national well-being of a Member State.”<sup>158</sup> In such event, voting must be unanimous.<sup>159</sup> An affirmative vote of at least 75% of the Member States is required to satisfy the qualified majority requirement.<sup>160</sup>

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<sup>152</sup> See *id.* art. 15-17, ¶ 1.

<sup>153</sup> This veritable alphabet soup of acronyms aptly conveys the many-armed and many-headed Hydra-like organizational structure.

<sup>154</sup> *Id.*

<sup>155</sup> See *id.* art. 15-17.

<sup>156</sup> *Id.* art 15, ¶ 2(a).

<sup>157</sup> See *id.* art. 29, ¶ 2.

<sup>158</sup> The decision whether a matter is of critical importance to the national well-being of a Member State “is reached by a two-thirds majority of the Member States.” *Id.* art. 29, ¶ 4.

<sup>159</sup> *Id.* art. 29, ¶ 3.

<sup>160</sup> *Id.* art. 29, ¶ 2. The effect of these voting provisions is analyzed and discussed *infra* Part V.B.

## 2. *Bodies, Institutions, and Associate Institutions*

### a. *Community Bodies*

The Revised Treaty also creates the Legal Affairs and Budget Committees and the Committee of Central Bank Governors as Bodies of the Community,<sup>161</sup> while the Community Organs have residual power to create additional Bodies as such Organs deem necessary.<sup>162</sup> Each of the Bodies is composed of officials or, in the case of the Legal Affairs Committee, ministers appointed to analogous portfolios in the national affairs of Member States.<sup>163</sup>

### b. *Community Institutions and Associate Institutions*

The Institutions and Associate Institutions of the Community include: the Caribbean Meteorological Institute, the Caribbean Meteorological Organization, the Association of Caribbean Community Parliamentarians,<sup>164</sup> all Institutions;<sup>165</sup> the Caribbean Development Bank; and the Universities of the West Indies and of Guyana, and the Caribbean Law Institute/Caribbean Law Institute Centre, all Associate Institutions.<sup>166</sup>

The internal functioning, composition, and duties of these Institutions and Associate Institutions—most of which were established through separate regional agreements<sup>167</sup>—are not discussed in the Revised Treaty. Because of this structure, there is uncoordinated activity in microspheres of competence. The monitoring, reporting, and coordination among these entities of such disparate competences are not specified by the Revised Treaty.

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<sup>161</sup> *Id.* art. 18.

<sup>162</sup> *Id.* art. 18, ¶ 3.

<sup>163</sup> *See id.* art. 19.

<sup>164</sup> Interestingly, revised treaty appears to misname this body. The true name of the body is clear from the document that established it: "Agreement for the Establishment of an *Assembly* of Caribbean Community Parliamentarians" (emphasis added); *see also infra* note 251 and accompanying text.

<sup>165</sup> *See* Revised Treaty, *supra* note 25, art. 1.

<sup>166</sup> *Id.* art. 22.

<sup>167</sup> *See* Pollard, *supra* note 8, *passim*.



*c. The Secretariat and the Secretary-General*

The Secretariat is designated by Article 23 of the Revised Treaty as the principal administrative organ of the Community, with headquarters in Georgetown, Guyana.<sup>168</sup> The Treaty seeks to assure the independence of the Secretariat by prohibiting the Secretariat from taking instructions from Member States or any external bodies.<sup>169</sup> The Treaty also abjures Member States to respect the international character of the Secretary-General.<sup>170</sup>

The Secretary-General is appointed by the Heads of Government Conference for a term of five years, subject to reappointment.<sup>171</sup> The duties of the Secretariat and Secretary-General include: representation of the Community,<sup>172</sup> development for implementation of decisions of competent Community Organs,<sup>173</sup> implementation of the monitoring of Community decisions,<sup>174</sup> the initiation or development of proposals for consideration by competent Community Organs,<sup>175</sup> record-keeping,<sup>176</sup> fact-finding,<sup>177</sup> and service of meetings of Organs and Bodies of the Community.<sup>178</sup>

*B. Analysis*

*1. Composition, Function and Voting of Institutional Entities*

*a. Composition*

The Conference of Heads of Government, the Council of Ministers and the Ministerial Councils, and the Primary and

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<sup>168</sup> See Revised Treaty, *supra* note 25, art. 23, ¶ 1.

<sup>169</sup> See *id.* art. 23, ¶ 4.

<sup>170</sup> *Id.* art. 23, ¶ 5.

<sup>171</sup> *Id.* art. 24, ¶ 1.

<sup>172</sup> *Id.* art. 24, ¶ 2(a).

<sup>173</sup> *Id.* art. 24, ¶ 2(b).

<sup>174</sup> Revised Treaty, *supra* note 25, ¶ 2(f).

<sup>175</sup> *Id.* art. 24, ¶ 2(g).

<sup>176</sup> *Id.* art. 25(d).

<sup>177</sup> *Id.* art. 25(i).

<sup>178</sup> *Id.* art. 25(a); see also Pollard, *supra* note 8, at 889.

Secondary Organs of the Community are all composed of elected or appointed officials.<sup>179</sup> The consequences of this composition in terms of dedication to CARICOM goals and effectiveness are as follows:

1. As elected or appointed officials in their respective domestic territories, the members of these organs have the advantage of more than superficial knowledge in the spheres of competence to which they are assigned. On the other hand, consciousness of their elected or appointed positions imparts some constraints to their activities within the Community. Clearly, a primary goal is to maintain electoral dominance in the domestic context, while appointed Ministers must continue to please the heads of government and political parties that appointed them.
2. While some functions may necessarily overlap, it is doubtful that full-time ministers with demanding portfolios have the time and energy required to direct the successful implementation of the CARICOM project.
3. Assuming that the Member States are on different electoral schedules, the membership of the Primary and Secondary Organs is subject to frequent change. Consequently, the members of these organizational entities have limited ability to build up the trust, competence and political compromise required to effectively initiate and implement proposals for the implementation of CARICOM economic integration. The scope of this problem must be multiplied in light of the need for the Ministerial Councils, the Council of Ministers—and the Heads of Government with respect to decision making—to work together and coordinate sometimes overlapping competences.<sup>180</sup>

The drafters appear to have recognized the danger posed by the dispersal of power to act in tandem with the hoarding of decision-making power in the Community.<sup>181</sup> For example, Article 20,

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<sup>179</sup> See *supra* Part V.A.1 (describing: "Heads of Government Conference," "Community Council of Ministers" and "Ministerial Councils").

<sup>180</sup> See Revised Treaty, *supra* note 25, arts. 10, 12.

<sup>181</sup> Article 20 of Revised Treaty (*Cooperation by Community Organs*) and Article 26 (*The Consultation Process*) attempt to foreclose the difficulties attendant to the rival competences and powers of Community Organs and Bodies. See *id.* arts. 20, ¶1, 26.

paragraph 1, commands Community Organs to cooperate for the achievement of Community objectives,<sup>182</sup> while paragraphs two through six outline some broad mechanisms and procedures for the actualization of such cooperation.<sup>183</sup> The effectiveness of these broad-brushed attempts to facilitate coordination among the disparate heads and arms can be assessed only once the Revised Treaty has been ratified and these provisions come into effect.

In contrast, the European Union, while requiring that the Council of Ministers and the Commission consult with each other and "settle by common accord their methods of cooperation,"<sup>184</sup> also lays out in great detail the decision-making<sup>185</sup> and co-decision-making<sup>186</sup> procedures that the Commission, the Council, and the European Parliament must adhere to in legislating. This mandated mechanism for cooperation and coordination creates an objective pathway for the functioning of European Union institutions.

#### *b. Function*

The European Council of the European Union is also composed of the heads of state or government of the Member States and the president of the Commission.<sup>187</sup> Its principal role is to provide the long-term policy objectives of the Union and to resolve political impasses that cannot be settled within the Union's institutions—that is, the Council of Ministers, the Commission, and their various divisions.<sup>188</sup> For example, the European Council, not the Commission, established the criteria for accession by new Member States.<sup>189</sup>

The distancing of the heads of state from the quotidian administration of the European Union serves to conserve its power for important decisions, decrease opportunities for political

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<sup>182</sup> "Community Organs shall cooperate with each other for the achievement of Community objectives." See Revised Treaty, *supra* note 25, art. 30, ¶1.

<sup>183</sup> *Id.* art. 20, ¶¶ 2-6.

<sup>184</sup> See Consolidated Treaty, *supra* note 30, art. 218.

<sup>185</sup> *Id.* art. 251.

<sup>186</sup> *Id.* art. 252.

<sup>187</sup> *Id.* art. 203.

<sup>188</sup> *Id.* art. 202.

<sup>189</sup> See BERMAN ET AL., *supra* note 38, 40-42.

grandstanding by political leaders, and reserve to the Council of Ministers and the Commission the initiation, administration, implementation, and enforcement of Union programs and initiatives. By contrast, the close involvement of the CARICOM Heads of Government Conference, including the power to decide quotidian budgetary and other objectives of other Community organizations,<sup>190</sup> opens the door for political grandstanding and lack of coordination at the highest level.

Furthermore, while also featuring a body analogous to the heads of government conference the European Council and Council of Ministers, the European Union has delegated to the Commission the competences assigned by the Revised Treaty to the Council of Ministers and the Ministerial Councils.<sup>191</sup> The Commission is composed of one Commissioner from each Member State,<sup>192</sup> who is assigned on a full-time basis for a period of five years.<sup>193</sup> The European Commission is a nerve center for Union initiatives and implementation. Each Commissioner has made an "undertaking" to uphold the objectives of the Union.<sup>194</sup> The dangers of lack of desire or inability to commit to Community goals are eliminated,<sup>195</sup> as are the issues of trust and inability to work together to affect Community goals in a timely fashion.<sup>196</sup> The ability to build up an institutional knowledge base is further enhanced by the civil servants who are permanently employed by the Commission.

In the Community, the CARICOM Secretariat is meant to fulfill some of the roles of the European Commission. However, it is clear from a comparison of the powers, duties, and responsibilities assigned to these two bodies that the Secretariat does not have the heft of the Commission. The Secretariat may

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<sup>190</sup> Revised Treaty, *supra* note 25, art. 12.

<sup>191</sup> See Consolidated Treaty, *supra* note 30, art. 211; see also Revised Treaty, *supra* note 25, art. 10, 13.

<sup>192</sup> Consolidated Treaty, *supra* note 30, art. 213.

<sup>193</sup> *Id.* art. 214.

<sup>194</sup> *Id.* art. 213.

<sup>195</sup> A Commissioner may not engage in any other employment during the term of his appointment. *Id.* art. 212.

<sup>196</sup> Barring death, resignation, etc., each group of Commissioners will work together for a five-year period. *Id.* art. 214. The finite term of office serves to prevent the ossification of ideas and entrenchment of power within the Commission.

not propose and adopt regulations affecting Community goals, and it is positioned as a resource rather than an implementing organization.<sup>197</sup> It is worth noting that the West Indies Commission, in the 1992 Commission Report,<sup>198</sup> recommended the creation of a Caribbean Commission with some of the attributes of the European Commission. This recommendation has not been adopted in the Revised Treaty.<sup>199</sup>

The starkest contrast between CARICOM and the European Union is that between the European Union's Council of Ministers and European Commission and the respective Ministerial Councils and Secretariat of the Community. The Community's broad distribution of competences must be contrasted to the cohesive approach of the European Commission, where Commissioners, representing individual Member States, are assigned primary responsibility for portfolios.<sup>200</sup> A single Commissioner is unable to act on his or her own, and stated procedural rules require decision to be made as a body.<sup>201</sup> This organizational structure facilitates the building of institutional competence, as well as ensures that the Commission as a body is knowledgeable about proposals and other European Community actions that may have consequences for more than one sphere. The Commission is thus able to handle such issues internally, referring only issues on which they reach impasse to the Council of Ministers for political horse-trading and compromise.

### c. Voting

Duke Pollard, legal adviser to the CARICOM Secretariat, notes:

The Caribbean Community, despite its misleading nomenclature, is an association of sovereign states . . . . [T]he retention of the unanimity rule in voting procedures of the

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<sup>197</sup> See Revised Treaty, *supra* note 25, art. 23.

<sup>198</sup> See *supra* note 96 and accompanying text.

<sup>199</sup> See Peter Wickham, *More Shadow than Substance*, CARIBBEAN AFFAIRS, July-Aug. 1994, at 38, reprinted in BEYOND SURVIVAL, *supra* note 15, at 234 (explaining some criticisms of the West Indian Commission and its recommendations, including discussion of the perceived difficulty of adopting the recommendations to create a CARICOM Commission).

<sup>200</sup> See Consolidated Treaty, *supra* note 30, arts. 211-219.

<sup>201</sup> *Id.* art. 219.

Conference, the highest decision-making body, is intended to emphasize the principle of sovereign equality of states and to scotch in the bud any lingering disposition at political integration.<sup>202</sup>

However, the Revised Treaty of Chaguaramas has boldly eliminated the unanimity requirement of the 1973 Treaty,<sup>203</sup> evincing an intent to streamline Community decision-making and implementation.<sup>204</sup> This is a welcome move which is undercut by the ability of individual Member States to opt out of Community obligations.<sup>205</sup>

The Community has declined to adopt the qualified majority voting of the European Union,<sup>206</sup> where Member States are assigned weighted votes based on population size.<sup>207</sup> This is a wise compromise between both the sensitivities of Caribbean Member States to the relinquishment of sovereignty, and the rational fears of smaller Member States that they would always be outvoted by their more populous neighbors. On the other hand, through the mechanism of the opt-out provision, smaller Member States would probably be able to reject obligations perceived as detrimental to their interests. However, the ability of some Member States to avoid Community obligations will have a negative impact on the compliance and implementation incentives of other Member States.<sup>208</sup>

While the composition, functions, and voting mechanisms of the Community, while largely and positively reformed by the Revised Treaty, manifest inherent flaws that will have a negative

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<sup>202</sup> Pollard, *supra* note 8, at 460.

<sup>203</sup> See *supra* notes 157-160 and accompanying text; see also David S. Berry, *supra* note 24, at 16-17.

<sup>204</sup> *Id.* at 16-17.

<sup>205</sup> Revised treaty, *supra* note 25, art. 27, ¶ 4 ("Subject to the agreement of the Conference, a Member State may opt out of obligations arising from the decisions of competent Organs provided that the fundamental objectives of the Community, as laid down in the Treaty, are not prejudiced thereby."). See Berry, *supra* note 24, at 16 (discussing the possible consequences of allowing a Member State to opt out).

<sup>206</sup> See Consolidated Treaty, *supra* note 30, art. 190.

<sup>207</sup> Each CARICOM Member State has one vote in the proceedings of the Heads of Government Conference and the Primary and Secondary Organs. See Revised Treaty, *supra* note 25, art. 27, ¶ 1.

<sup>208</sup> See Berry, *supra* note 24.

effect on the effectiveness of the Community. To the extent that positive reforms of the 1973 Treaty have been made, the Community and its leaders should be heralded. However, the compromise decision to take a partial plunge toward a truly supranational organization will ill-serve the implementation of the CSME, because CARICOM, as a regional body, still lacks the ability to compel Member States to implement Community programs.

## **VI. Flawed Dispute Settlement; Absence of Popular Participation**

In comparison with analogous provisions of the 1973 Treaty, the dispute resolution and enforcement provisions of the Revised Treaty reflect a bold step by the Community. Nevertheless, the mechanisms for resolving disputes between Member States, the means of enforcing Member State obligations to the constitutive documents, and the role of citizens in the integration process illuminate the aspirational nature of the region's economic integration project.

### *A. Dispute Settlement and Enforcement*

Chapter Nine (Articles 187–224) of the Revised Treaty creates a dispute settlement regime that appears to be extremely deferential to the sovereignty of CARICOM Member States:

(1) The nature of disputes covered by the provisions includes failure to implement the objectives of the Community or adoption of measures that would frustrate its purposes.<sup>209</sup> Six modes of dispute resolution are named<sup>210</sup> and described in some detail.<sup>211</sup> Disputing Member States have the option of choosing any of the named alternatives as the desired method of dispute resolution,<sup>212</sup> and the Revised Treaty appears to contemplate that a dispute may progress through each type of dispute settlement,

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<sup>209</sup> See Revised Treaty, *supra* note 25, art. 187(a) (“[A]llegations that an actual or proposed measure of another Member State is, or would be, inconsistent with the objectives of the Community.”); *Id.* art. 187(d) (“[A]llegations that the purpose or object of the Treaty is being frustrated or prejudiced.”).

<sup>210</sup> *Id.* art. 188, ¶ 1 (“[G]ood offices, mediation, consultations, conciliation, arbitration, and adjudication.”).

<sup>211</sup> *Id.* arts. 191–207.

<sup>212</sup> *Id.* arts. 189, 190.

starting with good offices and finally concluding in adjudication.<sup>213</sup>

In tandem with the opt-out provisions discussed in Part V(B), the stage-by-stage dispute settlement mechanism that the Revised Treaty provides will facilitate Member State non-compliance. If a Member State does not choose to opt out, it may nevertheless delay implementation of its obligations under the Revised Treaty while the dispute, advances through the stages of attempted resolution laid out by the Revised Treaty's dispute resolution provisions.

(2) Adjudication under the Revised Treaty is reserved to the jurisdiction of the Caribbean Court of Justice (CCJ or Caribbean Court),<sup>214</sup> established under a separate agreement between Member States.<sup>215</sup> The composition, jurisdiction, functioning, and powers of the court are outlined in that Agreement,<sup>216</sup> and the CARICOM Member States expressly acknowledge the compulsory jurisdiction of the Court in the Revised Treaty.<sup>217</sup>

The Caribbean Court, which will function both as the court of final appeal for the CARICOM Member States' domestic courts of general jurisdiction and the judicial organ of the Community—that is, adjudicator of disputes under the Revised Treaty<sup>218</sup>—was scheduled for launch in November of 2004.<sup>219</sup> The CCJ has original jurisdiction of disputes arising from the Revised Treaty and will also replace the Judicial Committee of the Privy Council

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<sup>213</sup> See Revised Treaty, *supra* note 25, arts. 199 ¶ 2, 192 ¶ 2, 193 ¶ 9.

<sup>214</sup> *Id.* art. 1 (“‘Court’ means the Caribbean Court of Justice established by the Agreement.”).

<sup>215</sup> See AGREEMENT ESTABLISHING THE CARIBBEAN COURT OF JUSTICE [hereinafter CCJ AGREEMENT], reprinted in Pollard, *supra* note 8, at 441. See generally Sheldon A. McDonald, *The Caribbean Court of Justice: Enhancing the Law of International Organizations*, 27 FORDHAM INT'L L.J. 930 (2004). For a discussion of the issues raised by the proposed creation of the Court, in particular with respect to its appellate jurisdiction in cases arising under the domestic laws of Member States, see generally Stephen Vasciannie, *The Caribbean Court of Justice: Further Reflections on the Debate*, 23 WEST INDIAN L.J. 37 (1998).

<sup>216</sup> See CCJ AGREEMENT, *supra* note 215.

<sup>217</sup> See Revised Treaty, *supra* note 25, art. 216.

<sup>218</sup> See CCJ AGREEMENT, *supra* note 215, art. III, ¶ 1. For detailed discussion and analysis of the Court, its constitution and jurisdiction, see generally McDonald, *supra* note 215.

<sup>219</sup> The launch was delayed until the first quarter of 2005. See Singh, *supra* note 17.



of the United Kingdom's House of Lords as the court of final appeal with general jurisdiction in the Member States.

The CCJ was finally launched on April 16, 2005.<sup>220</sup> By the end of 2004, the Member States had accomplished much of the joint preparatory work required for that launch, including the appointment of the President of the Court and the selection by the competent Community organization—that is, the Regional Judicial and Legal Services Commission—of six of the nine judges<sup>221</sup> provided for by the treaty establishing the Court.<sup>222</sup> However, some of the Member States have not yet transposed their obligations under the CCJ Agreement into domestic law.<sup>223</sup>

Although the CCJ was successfully launched as the judicial body with original jurisdiction of disputes under the Revised Treaty, its other functions have not been implemented as successfully. Of the fifteen CARICOM Member States, only Barbados and Guyana have passed domestic implementing legislation that allows the Caribbean Court to be the court of final appeal for domestic, civil, and criminal matters. The other Member States continued to be mired in internal political dispute, as exemplified by the successful constitutional challenge by the Jamaican opposition party.<sup>224</sup>

While the Community's relatively efficient activities with respect to the implementation of the Court would appear to evidence a greater thrust toward regional integration. Ironically, that implementation may stem from the Member States' jealousy of their sovereignty and the exercise of that sovereignty. The institution of a regional court was first put forward as early as 1947,<sup>225</sup> and there had been various calls for the formation of such

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<sup>220</sup> See Press Release, CARICOM, *supra* note 20.

<sup>221</sup> See Press Release, Reg'l Jud. & Legal Services Comm., [http://www.caricom.org/jsp/pressreleases/pres189\\_04.htm](http://www.caricom.org/jsp/pressreleases/pres189_04.htm). As of August 1, 2005, there are 7 justices of the CCJ. See Caribbean Court of Justice, <http://www.caribbeancourtsofjustice.org/judge.htm>.

<sup>222</sup> See CCJ AGREEMENT, *supra* note 215, art. IV, ¶ 1. The number of judges may be increased by the Heads of Government Conference of the Member States. *Id.* art. IV, ¶ 2.

<sup>223</sup> Singh, *supra* note 17. These include Trinidad and Tobago, the Member State that will host the Court. *Id.*

<sup>224</sup> See *infra* note 230.

<sup>225</sup> See Pollard, *supra* note 8, at 435.

a court in the years following independence from Britain.<sup>226</sup> Despite this, the first definitive steps toward the formation and launch of such a court is relatively recent. Public perception in the region is that the true impetus behind the implementation of the regional court is the Privy Council's decision in *Pratt and Another v. Attorney-General of Jamaica*<sup>227</sup> and its later jurisprudence. The Privy Council found that the imposition of the death penalty in Jamaica and other CARICOM Member States whose court of highest appeal continues to be the Judicial Committee of the Privy Council violated the rights of the appellants. Despite the Member States' overt limitations in the CCJ Agreement on the influence of the Member States' governments on the appointment and independence of judges, legal professionals inside and outside the region fear that the creation of the Court is actuated by the Member States' desire to overturn the prohibition against the death penalty.<sup>228</sup>

Whether the launch of the Court represents a thrust toward more effective implementation of the economic integration goals of the Community or is a mechanism through which the Members States attempt to hold onto their sovereignty is yet to be determined. Even if the underlying motive of the Member States is to protect their sovereignty from the judicial supervision of their former colonial master, the functioning of the court may undercut such motive, creating greater integration through the development of a regional body of law and realizing the avenue for the adjudication of disputes under the Revised Treaty.

The delay in verification and transposition of the CCJ Agreement is an example of the barrier to implementation presented by the dualist heritage of the Commonwealth Caribbean.<sup>229</sup> The ratification of this treaty and its implementation

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<sup>226</sup> *Id.*

<sup>227</sup> 4 All E.R. 769 (1993). For a summary of the background of the case, and a discussion of the issues before the Privy Council, see GEOFFREY ROBERTSON, *THE JUSTICE GAME* 93-103 (1999).

<sup>228</sup> See, e.g., Vasciannie, *supra* note 215, at 55-57. By the end of July 2005, Barbados had brought the first death penalty case before the Caribbean Court. See Dawne Bennett, *Barbados May Take First Death Penalty Case to the CCJ*, CARIBBEAN NET NEWS BARBADOS CORRESPONDENT June 3, 2005, <http://www.caribbeannetnews.com/2005/06/03/cases.shtml>.

<sup>229</sup> Monist and dualist theories of the interaction of international and domestic law

into national law remained mired in the domestic political and legal systems of the Member States.<sup>230</sup> As such, the relatively progressive adjudication provisions of the Revised Treaty are delayed, including the ability of citizens and interested third parties to enforce Member State obligations under the Revised Treaty.

In the European Union context, scholars and commentators attribute much of the success of the integration process to the European Court of Justice.<sup>231</sup> It was the Court's willingness to declare the supremacy of Union obligations, together with the direct effect of European Community regulations and directives,<sup>232</sup>

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state, respectively: (1) the international and domestic laws are part of the same system, such that international treaties and other obligations are directly implemented into domestic laws without further action by domestic lawmakers (monists), and (2) international and domestic laws are distinct, such that the domestic lawmakers must separately adopt the international obligations into domestic law (dualists). See DAMROSCH ET AL., *supra* note 52, at 160.

<sup>230</sup> See, e.g., *Sobion Raps J'can, T&T Oppositions for Stance on CCJ*, JAMAICA OBSERVER, Jan. 23, 2004, [http://www.jamaicaobserver.com/news/html/20040122t210000-0500\\_54710\\_obs\\_sobion\\_raps\\_j\\_can\\_\\_t\\_t\\_oppositions\\_for\\_stance\\_on\\_ccj.asp](http://www.jamaicaobserver.com/news/html/20040122t210000-0500_54710_obs_sobion_raps_j_can__t_t_oppositions_for_stance_on_ccj.asp) (describing, in particular, the political grandstanding in Trinidad and Tobago regarding transposition of the CCJ Agreement into national law, and the reversal of support by the opposition party following their electoral loss). While the court's inauguration was scheduled for November 2004, it was later postponed to the first quarter of 2005. In the meantime, a constitutional challenge against domestic legislation establishing the court was filed by the Jamaican opposition party. See Singh, *supra* note 17. On February 3, 2005, the Judicial Committee of the Privy Council ruled unconstitutional the legislation enacted by Jamaica to establish the CCJ. See Press Release, CARICOM, CARICOM Member States Proceed with Legislative Harmonisation for Single Market Economy (Feb. 5, 2005), [http://www.caricom.org/jsp/pressreleases/pres29\\_05.htm](http://www.caricom.org/jsp/pressreleases/pres29_05.htm); see also *Indep. Jam. Council of Hum. Rts. Ltd. v. Marshall-Burnett & Anor. (Jam.)* (UKPC (Feb. 3, 2005)). The ruling precipitated intense negotiations between the Jamaican government and opposition, with the goal of Jamaican participation in the launch of the Caribbean Court. See Balford Henry, *Gov't, Opposition CCJ Talks Could Start Tomorrow*, JAMAICA OBSERVER, Feb. 9, 2005, [http://www.jamaicaobserver.com/news/html/20050208T230000-0500\\_74798\\_OBS\\_GOV\\_T\\_\\_OPPOSITION\\_CCJ\\_TALKS\\_COULD\\_START\\_TOMORROW.asp](http://www.jamaicaobserver.com/news/html/20050208T230000-0500_74798_OBS_GOV_T__OPPOSITION_CCJ_TALKS_COULD_START_TOMORROW.asp). The compromise, reached with so tight a turnaround time that the implementing domestic legislation was passed only the day before the launch of the Caribbean Court, created original jurisdiction with respect to matters arising under Revised Treaty, but did not replace the Privy Council as the court of final appeal in domestic civil and criminal matters for Jamaica. See *Senate OKs CCJ*, ZIP LAW, Apr. 16, 2005, <http://www.ziplaw.com/news/archives/000239.html>.

<sup>231</sup> See, e.g., BERMAN ET AL., *supra* note 38, at 352-55.

<sup>232</sup> See Case 6/64, *Costa v. Ente Nazionale per l'Energia Elettrica (ENEL)*, 1964

and the enforcement action of private parties and individuals facilitated by Article 234 of the Treaty of European Union,<sup>233</sup> that provided the fuel for Member State implementation and the inevitability of the integration process.

(3) The dispute settlement provisions of the Revised Treaty appear to reserve to Member States the ability to use the Revised Treaty's procedures to enforce Member State implementation. In other words, the Community, in the form of its Organs or Bodies (or the Secretariat) is never expressly or implicitly granted the competence to enforce Member State compliance with Community obligations. However, Articles 213 and 222 contemplate the participation in adjudication by private parties through a referral procedure from domestic courts or through special leave by the Court.

The Revised Treaty provides that decisions of the Community's Organs are binding on the Member States,<sup>234</sup> subject to the ability of Member States to opt out.<sup>235</sup> Moreover, the Member States expressly commit in the general undertaking clause to take positive measures to fulfill obligations arising from the Revised Treaty, or from the decision of Organs.<sup>236</sup>

However, this hopeful picture of Member State commitment and effective implementation is undercut by Article 240, Saving of the Revised Treaty, which expressly recognizes that decisions of Community Organs must be transposed into national law in order to create legally binding effects.<sup>237</sup> The necessity of transposition, which may vary in form in each Member State, creates built-in delays to the implementation of Community programs.<sup>238</sup>

In contrast, the European Court of Justice held that European

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ECR 585; Case 106/77, *Amministrazione delle Finanze dello Stato v. Simmenthal S.p.A.* 1978 ECR 629; *BERMAN ET AL.*, *supra* note 38, at 253-69.

<sup>233</sup> See Consolidated Treaty, *supra* note 30, art. 234.

<sup>234</sup> See Revised Treaty, *supra* note 25, arts. 28 ¶ 1, 29 ¶ 1.

<sup>235</sup> See *id.* art. 27, ¶ 4.

<sup>236</sup> See *id.* art. 9.

<sup>237</sup> The dualist legal heritage of the Commonwealth Caribbean requires that international treaties be transposed into domestic law in order to become part of the domestic legal system.

<sup>238</sup> See, e.g., *Sobion Raps J'can, T&T Oppositions for Stance on CCJ*, *supra* note 230 (discussing the different requirements for the establishment of the Caribbean Court of Justice).

Community law, in the form of some European Community directives, regulations, and treaty documents, was supreme within the Union and regulations of the European Community and some directives had a direct effect on Member States.<sup>239</sup> Therefore, the binding obligations created by the Union can be enforced by the Commission, other Member States, and individual citizens.<sup>240</sup>

*B. Limited Role of Citizens in the Integration Process*

*The average Caribbean person knows very little about the workings of CARICOM and this is a serious indictment on this West Indian body of eminent men who have managed to establish what in essence is nothing more than a 'country club' exclusively designed for their incessant natterings, delectable social gatherings and inconsequential summits that are best remembered for what was not achieved.*<sup>241</sup>

The dispute resolution and enforcement mechanisms of the Revised Treaty, as well as the law-making power of the Community and the minor role provided for Caribbean citizens, illustrate the reluctance of Member States and their political leaders to relinquish the sovereign powers they hold dear to effect the economic integration to which they avowedly aspire.

The role of citizens in a regional integration process is a crucial one. The citizens of the Member States have the collective ability, through the ballot box or demonstrations, to "encourage" their political leaders to pursue or reject integration.<sup>242</sup> The ability to participate and have a voice in the process, and the provision made for such voice in the integration project, may therefore serve as a bellwether for Member State commitment to implementation and to a democratic process.

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<sup>239</sup> See Costa, *supra* note 232. *Amministrazione delle Finanze dello Stato*, *supra* note 236.

<sup>240</sup> Through the preliminary reference mechanism outlined *supra* note 133 and accompanying text.

<sup>241</sup> Smith, *supra* note 1. Irked by the CARICOM failure to meaningfully intervene in the latest Haitian crisis, Smith questions the relevance of CARICOM in the region's future. Note that Smith, arguably more knowledgeable about the integration process, refers to CARICOM as a "West Indian body," and ignores Suriname's and Haiti's membership in the organization. *Id.*

<sup>242</sup> See, e.g., Bilefsky, *supra* note 10 (discussing rejection of the proposed European Union constitution by French and Dutch voters).

The leaders of the Caribbean regional economic integration endeavor have avoided meaningful participation by the Caribbean people. One regional observer<sup>243</sup> places the blame squarely on the political leadership's reluctance to allow or facilitate meaningful interaction by their citizens. "The talk in the streets is that CARICOM is a toothless mongoose, and much of this toothlessness has to do with the fact that our respective leaders in the region have not really embraced their people in the integration process."<sup>244</sup>

On this front, the Revised Treaty appears to be divided. On the one hand the Revised Treaty appears to open the door for individual citizen enforcement of obligations and rights created by the Community, while on the other it virtually forecloses effective citizen participation in decision-making. As discussed above, the Revised Treaty, almost certainly inspired by the example of the European Union,<sup>245</sup> has provided a role to private individuals in the enforcement of European Community norms. That is, under Article 214, Referral to the Court, domestic courts in Member States are commended to refer to the Caribbean Court cases where resolution of issues of Community law are necessary for adjudication.<sup>246</sup> This referral mechanism, very effective in the implementation of the single market in the European Union context, may become a powerful tool in the hands of Caribbean citizens. These citizens may thereby be able to enforce rights conferred by the Community through the Revised Treaty or by Organ or CCJ decision.

This development will be dependent both on the necessary discretion of domestic courts—will they "recognize," *i.e.*, take judicial notice of, issues of Community law as necessary to their adjudication of domestic cases?—and the reputation and regard in

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<sup>243</sup> See Smith, *supra* note 1.

<sup>244</sup> See *id.*

<sup>245</sup> See *supra* note 133 and accompanying text for discussion of the Article 234 of the Consolidated Treaty.

<sup>246</sup> In addition, and perhaps more importantly and more revolutionary, Article 222, explicitly recognizes the right of private parties to intervene in cases involving Member States before the Caribbean Court of Justice enforces rights and benefits provided under the Treaty. The provision does outline a three-step substantive test, perhaps overly dependent on the discretion of the Caribbean Court, but does open the door to direct citizen involvement. See Revised Treaty, *supra* note 25, art. 222.

which the Caribbean Court will be held. Also relevant will be the ability of the Caribbean Court to assert a broad ranging jurisdiction and its perceived and actual powers of enforcement. Within the European Union, the exercise of this feature has been dependent on close collaboration and mutual respect between the European Court of Justice and the domestic courts of Member States.<sup>247</sup>

Other than the provisions above, the Revised Treaty makes little provision for the voice or participation of the citizens of Member States. For example, the Revised Treaty designates the "Association" of Caribbean Community Parliamentarians as a "mere" Institution of the Community,<sup>248</sup> instead of incorporating the Assembly as a Body or Organ of CARICOM, and omits a specific role for that body. These actions strongly indicate that the political process and direction of integration is divorced from the Caribbean people and lacks a foundation in democratic principles.<sup>249</sup>

Unlike the Parliament of the European Union, the members of the Assembly are not specifically elected to the Assembly.<sup>250</sup> Rather, majority and opposition members of Parliament from CARICOM Member States are designated by their home Parliaments,<sup>251</sup> ensuring that it is the voice of the establishment, and not that of an independent or gadfly expressly chosen by the voters for that purpose.

The Assembly is rendered powerless by the narrow scope of its operations. It may make recommendations to the Conference, Council, Institutions, and Associate Institutions;<sup>252</sup> request reports from those bodies;<sup>253</sup> discuss and make recommendations on any

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<sup>247</sup> BERMAN ET AL., *supra* note 38, at 352-55.

<sup>248</sup> See Revised Treaty, *supra* note 25, art. 21.

<sup>249</sup> For discussion of the "democratic deficit" in the European Union, see BERMAN ET AL., *supra* note 38, at 1229-31.

<sup>250</sup> Consolidated Treaty, *supra* note 30, art. 190.

<sup>251</sup> See Agreement for the Establishment of an Assembly of Caribbean Community Parliamentarians, art. 3 [hereinafter ACCP Agreement], reprinted in Pollard, *supra* note 8.

<sup>252</sup> See ACCP Agreement, *supra* note 251, art. 5(a).

<sup>253</sup> *Id.* art. 5(b).

matter within the scope of Community objectives;<sup>254</sup> adopt resolutions on issues arising out of the 1973 Treaty;<sup>255</sup> and discuss and make recommendations on issues referred to it by the Conference.<sup>256</sup> The Assembly may *not* itself initiate proposals to implement integration. It does not have to be consulted, nor is its consent necessary to approval of the initiatives of Community Organs.<sup>257</sup>

In sum, the Assembly provides little more than a forum for discussion, severely limiting the implementation of the objectives outlined in Article 4 of the ACCP Agreement.<sup>258</sup> The objectives include the involvement of the people of the Community, the creation of opportunities for the involvement of Member State parliamentarians and people in the integration process, monitoring, and enhancing coordination opportunities for Member State parliamentarians. Handicapped by the powerless role assigned to it and low Member State interest in its functioning, the performance of the Assembly has been disappointing, having little impact on the project of economic or other integration.<sup>259</sup>

The reluctance to involve citizens in the integration process is further exemplified by provisions in both the 1973 Treaty<sup>260</sup> and Revised Treaty,<sup>261</sup> which limit the free movement of people to

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<sup>254</sup> *Id.* art. 5(c).

<sup>255</sup> *Id.* art. 5(e). Note that the ACCP Agreement was drafted to work in conjunction with the 1973 Treaty. It should be amended to reflect the institutional changes wrought by Revised Treaty.

<sup>256</sup> *Id.* art. 5(d).

<sup>257</sup> ACCP Agreement, *supra* note 251, art. 5(d). The European Parliament also has limited legislative function. The institutional structure of the Union determines that it is the Commission, not the Parliament, which proposes legislation. See BERMAN ET AL., *supra* note 38, at 54. However, in response to the allegations of democratic deficit, there has been incremental additional involvement, and a movement to add a co-decision function to the consultation function of the European Parliament. The European Parliament demonstrated its power when Jose Miguel Barroso, the Commission's incoming President, withdrew his proposed slate of 24 commissioners in order to avoid the Parliament's expected rejection of that slate. Bilefsky, *supra* note 10.

<sup>258</sup> See ACCP Agreement, *supra* note 251.

<sup>259</sup> See Erskine Sandiford, *The Assembly of Caribbean Community Parliamentarians*, in BEYOND SURVIVAL, *supra* note 15, at 314. But see Pollard, *supra* note 8, at 228.

<sup>260</sup> See 1973 Treaty Annex, *supra* note 11, art. 38.

<sup>261</sup> See Revised Treaty, *supra* note 25, arts. 45, 46 (expressly limiting the freedom



skilled persons, university graduates, sports figures, artists, and musicians.<sup>262</sup> It is both ironic and a testament to the resourcefulness of the Caribbean people that the movement of people among Member States is significant.<sup>263</sup>

As discussed in Part III, the adherence of formerly colonized states to the ideals and myth of sovereignty enable strong leaders to act with broad competence in the domestic sphere. By clinging to the attributes of sovereignty that doctrinal and geo-political developments of the post-World War II era have constrained, both domestically and internationally, they are able to exercise the broad domestic discretion that more closely fits into their conception of sovereignty. The adherence to an outdated and unrealistic conception of sovereignty is a fundamental cause of the aspirational quality of CARICOM economic integration.

## VII. Conclusion

As the Community approached the six-month mark prior to the projected launch of the CSME, economic and political developments within and outside the Community highlighted the challenges of effective implementation of Caribbean regional integration:

1. Member State, The Bahamas, officially announced that it would adopt a wait-and-see approach and would not participate in the CSME for at least the first two years.<sup>264</sup>
2. At the Twenty-Sixth Meeting of the Conference of Heads of Government of the Caribbean Community, held in St. Lucia on July 3-6, 2005, Antigua and Barbuda lobbied for "Special

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of movement of Community nationals to "skilled" persons).

<sup>262</sup> *Id.* Although Article 45 of Revised Treaty provides that "Member States commit themselves to the goal of free movement of their nationals within the Community," Article 46 imposes the limitations listed in the text above. *Id.*

<sup>263</sup> For example, in Antigua, foreigners (Guyanese, Jamaicans, and Dominicans (from the Dominican Republic)) "make up 27 percent of the 42,000 registered voters eligible to cast ballots in national elections" scheduled for March 2004. See Robinson, Claude, *The Media and Caribbean Integration*, JAMAICA OBSERVER, Jan. 18, 2004, [http://www.jamaicaobserver.com/columns/html/20040118t010000-0500\\_54492\\_obs\\_the\\_media\\_and\\_caribbean\\_integration.asp](http://www.jamaicaobserver.com/columns/html/20040118t010000-0500_54492_obs_the_media_and_caribbean_integration.asp).

<sup>264</sup> Anita Joseph, *The Bahamas Rejects the Creation of CSME, Thus Compromising CARICOM's Integration Bid*, CARIBBEAN NET NEWS, July 12, 2005, <http://www.caribbeanetnews.com/2005/07/12/rejects.shtml>.

and Differential Treatment” within the common market for itself and other CARICOM members of the Organization of Eastern Caribbean States (the OECS).<sup>265</sup>

3. At the same meeting, Trinidad and Tobago exposed conflict among the Member States regarding Venezuela’s Petrocaribe initiative,<sup>266</sup> under which Venezuela seeks to sell petroleum products at a discounted rate to CARICOM Member States.<sup>267</sup> Trinidad and Tobago, the traditional supplier of energy resources to CARICOM Member States, expressed reservations about the initiative.
4. A few weeks after the Conference of Heads of Government meeting, the Dominican Republic, already a Community trading partner under the 1998 free trade agreement, announced its desire to join CARICOM,<sup>268</sup> presenting CARICOM with the prospect of widening the Community with the addition of an economy which is five times the size of the largest economy among the existing Member States.<sup>269</sup>
5. On August 1, 2005, a WTO arbitrator issued a report on the European Union’s proposed new banana regime finding that the proposed tariff system violated the European Union’s obligations under the GATT/WTO system.<sup>270</sup> The report inflicted further damage to the prospects of the ailing banana

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<sup>265</sup> *Antigua-Barbuda Pushes for Special Treatment for OECS States*, *supra* note 117.

<sup>266</sup> Rickey Singh, *Two Big Summit Surprises*, JAMAICA OBSERVER, July 10, 2005, [http://www.jamaicaobserver.com/columns/html/20050709t210000-0500\\_83871\\_obs\\_two\\_big\\_summit\\_surprises.asp](http://www.jamaicaobserver.com/columns/html/20050709t210000-0500_83871_obs_two_big_summit_surprises.asp).

<sup>267</sup> *Id.* Trinidad and Tobago’s perception of the threat posed to its oil-based economy, the potential diversion of its market, and diminution of its Community role conflicts with the potential benefits to other Member States because of the availability of cheaper energy resources from Venezuela.

<sup>268</sup> *Dominican Republic wants to join CARICOM*, THE JAMAICA OBSERVER INTERNET EDITION, July 26, 2005, [http://www.jamaicaobserver.com/news/html/20050725t210000-0500\\_84841\\_obs\\_dominican\\_republic\\_wants\\_to\\_join\\_caricom.asp](http://www.jamaicaobserver.com/news/html/20050725t210000-0500_84841_obs_dominican_republic_wants_to_join_caricom.asp).

<sup>269</sup> *Id.* Estimated at US\$55 billion in 2004, the Dominican Republic would be the largest economy in CARICOM.

<sup>270</sup> See Decision of the Ministerial Conference, *European Communities–The ACP-EC Partnership Agreement*, WT/MIN(01)/15 (Nov. 14, 2001), [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_acp\\_ec\\_agre\\_e.pdf](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_acp_ec_agre_e.pdf). See also *Big Blow for Bananas*, JAMAICA OBSERVER, Aug. 2, 2005, [http://www.jamaicaobserver.com/news/html/20050801t230000-0500\\_85328\\_obs\\_big\\_blow\\_for\\_bananas.asp](http://www.jamaicaobserver.com/news/html/20050801t230000-0500_85328_obs_big_blow_for_bananas.asp).

industries of the banana-producing Member States.

6. The political and humanitarian situation of Member State Haiti remains dire and unresolved. Elections are scheduled for fall 2005 but, as of late July 2005, only thirteen percent of the electorate was reported to have registered to vote, casting doubt on the perceived legitimacy of any electoral outcome.<sup>271</sup>
7. Other internal developments include resistance and objection by at least one Member State's leader to a perceived increase in the power wielded by the CARICOM Secretariat and its bureaucrats<sup>272</sup> and a call by Jamaica's opposition party for regional referenda on the CSME and the CCJ.<sup>273</sup> The opposition party explained that it was seeking "that the region's people be given a direct say in the decision,"<sup>274</sup> and made clear that it was particularly troubled by the impact of the CSME and the CCJ on "the sovereign authority of individual states."<sup>275</sup>
8. While these developments transpired, other regional trading arrangements that will affect CARICOM Member States interests were underway on several fronts, including: a proposed partnership by CARICOM and the Dominican Republic for the completion of an Economic Partnership Agreement with the European Union,<sup>276</sup> approval of the CAFTA by the U.S. Congress,<sup>277</sup> and ongoing negotiations between the U.S. and Andean nations.<sup>278</sup>

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<sup>271</sup> See *Aristide's Party to Run in Haiti's Elections*, JAMAICA OBSERVER, July 26, 2005, [http://www.jamaicaobserver.com/news/html/20050725t210000-0500\\_84842\\_obs\\_aristide\\_s\\_party\\_to\\_run\\_in\\_haiti\\_elections.asp](http://www.jamaicaobserver.com/news/html/20050725t210000-0500_84842_obs_aristide_s_party_to_run_in_haiti_elections.asp).

<sup>272</sup> See Rickey Singh, *CARICOM Bureaucrats Stealing Our Power—Gonsalves*, JAMAICA OBSERVER, June 24, 2005, [http://www.jamaicaobserver.com/news/html/20050623t220000-0500\\_82978\\_obs\\_caricom\\_bureaucrats\\_stealing\\_our\\_power\\_gonsalves.asp](http://www.jamaicaobserver.com/news/html/20050623t220000-0500_82978_obs_caricom_bureaucrats_stealing_our_power_gonsalves.asp).

<sup>273</sup> See *Let the People Vote*, THE JAMAICA OBSERVER INTERNET EDITION, July 4, 2005, [http://www.jamaicaobserver.com/news/html/20050703t220000-0500\\_83593\\_obs\\_let\\_the\\_people\\_vote.asp](http://www.jamaicaobserver.com/news/html/20050703t220000-0500_83593_obs_let_the_people_vote.asp).

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> See CUOPM.org, External Trade Negotiations Reviewed by CARICOM Heads, The Communications Unit of the Office of the Prime Minister, St. Kitts & Nevis, <http://www.cuopm.com/newsitem.asp?articlenumber=466>.

<sup>277</sup> See *Negotiators Arrive in Miami for U.S.-Andean Trade Talks*, *supra* note 121.

<sup>278</sup> *Id.*

Member States must confront internal dissension and lack of implementation, as well as challenges on several external fronts. In light of a thirty-year history of false starts and hesitations, are the Community's Member States prepared to achieve the regional economic integration they purport to seek?

The integration sought by the founders of CARICOM has been a merely aspirational one, whose achievements have been limited to the areas of intra-Community functional coordination and, to some extent, foreign policy coordination. In the sphere of development and economic integration, CARICOM has not risen to the challenges posed to it by the unique circumstances of the region. Instead, the Member States have allowed themselves to be seduced by the myth of sovereignty, failing to develop the strength that would be conferred by economic integration.

Nevertheless, both the Revised Treaty, and the fundamental structural changes it seeks to effect in the Caribbean Community, evince a consciousness of and movement toward integration by Community leaders. In particular, the elimination of the unanimity requirement for valid decision-making by Community Organs and Bodies, the CCJ Agreement and launch of the CCJ, as well as the dispute resolution provisions of the Revised Treaty, speak to a greater will to commit to integration.

However, the weakness of an institutional framework that serves to handicap smooth decision-making, the ability of Member States to opt out of binding Community decisions—together with a flawed dispute resolution mechanism—and the long delay in implementing the CCJ Agreement and in transposing Community obligations into national legislation<sup>279</sup> paint a bleak picture of lack of resolve and an inability to carry forward the fundamental integration to which both the 1973 Treaty and the Revised Treaty appear to aspire.

Member States, dazzled by the myth of sovereignty and jealously guarding formal indicators of such sovereignty—perhaps

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<sup>279</sup> See, e.g., *New Companies Act prepares JA for Carib single market*, JAMAICAN OBSERVER, Mar. 8, 2004, [http://www.jamaicaobserver.com/magazines/business/html/20040308t010000-0500\\_56760\\_obs\\_new\\_companies\\_act\\_prepares\\_ja\\_for\\_carib\\_single\\_market.asp](http://www.jamaicaobserver.com/magazines/business/html/20040308t010000-0500_56760_obs_new_companies_act_prepares_ja_for_carib_single_market.asp) (describing the passage in the Jamaican Senate of legislation intended to harmonize Jamaican laws regulating businesses with those of other Caribbean countries). The author notes that work in modernization and harmonization was first begun in 1990—14 years earlier.

inevitably, in light of the ever present threat posed by U.S. hegemony<sup>280</sup>—have, as yet, wrought a purely aspirational economic integration. Clearly inspired, in part, by the success of the European Union, they have failed to make the sovereignty concessions of the EU's Member States<sup>281</sup> or encourage or facilitate the participation of Caribbean citizens in the integration effort.<sup>282</sup>

The Member States appear to be more willing to pool sovereignties to achieve political ends or make symbolic stands. In this regard, it is interesting to note that the 2004 actions of Jamaican officials in response to the leadership and humanitarian crises in Haiti raise the possibility that Jamaica—and, perhaps, CARICOM—sought to use this opportunity to create a new locus of power in the Caribbean. The sojourn of deposed President Bertrand Aristide in Jamaica might have been a power play by Jamaica, with the intent of demonstrating to the United States that the reach of its hegemony will go only so far.<sup>283</sup>

If such was Jamaica's—and, by extension, CARICOM's—intent, it appears to have failed. Although the Community appears steadfast in its refusal to recognize the interim Haitian government, rifts soon appeared in the unified stance when foreign ministers from Barbados, The Bahamas, Guyana, and Trinidad and

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<sup>280</sup> For example, after ignoring or decrying as inappropriate CARICOM calls for a peacekeeping mission to Haiti prior to the escalation of the unrest that removed Aristide, the United States later sought to coerce CARICOM states to embrace the “legitimacy” of the interim government installed in Haiti with the United States’ blessings. See Powell Pledges to Help Latortue on CARICOM Recognition, JAMAICA OBSERVER, Apr. 6, 2004, [http://www.jamaicaobserver.com/news/html/20040406t010000-0500\\_58187\\_obs\\_powell\\_pledges\\_to\\_help\\_latortue\\_on\\_caricom\\_recognition.asp](http://www.jamaicaobserver.com/news/html/20040406t010000-0500_58187_obs_powell_pledges_to_help_latortue_on_caricom_recognition.asp); Rickey Singh, CARICOM Spurns Recognition Bid from Interim Haiti Government, JAMAICA OBSERVER, Mar. 28, 2004, [http://www.jamaicaobserver.com/news/html/20040328T020000-0500\\_57766\\_OBS\\_CARICOM\\_SPURNS\\_RECOGNITION\\_BID\\_FROM\\_INTERIM\\_HAITI\\_GOV\\_T.asp](http://www.jamaicaobserver.com/news/html/20040328T020000-0500_57766_OBS_CARICOM_SPURNS_RECOGNITION_BID_FROM_INTERIM_HAITI_GOV_T.asp).

<sup>281</sup> See *supra* Parts IV and V for analysis.

<sup>282</sup> The United States made no secret that it is not enamored with Aristide, failing to intervene in the violent upheaval that preceded his ouster until after Aristide's departure was inevitable. See *supra* note 6. Viewed in the most charitable light, the U.S. pressure on CARICOM members to recognize the interim Haitian regime carries political heft, indicating, perhaps, successful pooling of sovereignties in the coordination of foreign relations.

<sup>283</sup> Indeed, Aristide claims that he did not leave Haiti voluntarily, but was kidnapped by the forces of the United States and conveyed to the Central African Republic against his will. See *Aristide Visit Triggers Row*, *supra* note 6.

Tobago met with the interim president in Port-au-Prince.<sup>284</sup> However, the Community may be improving its international political heft. Delegates from China, Japan, Italy, Brazil, and India attended the July 2005 Conference of Heads of Government in St. Lucia, seeking CARICOM's support for a proposed expansion of the UN Security Council.<sup>285</sup>

In order to effectuate true regional economic integration, among the critical development tasks that confront the Community are:

1. Diversification of the economies of mono- or duo-agricultural producers among the Member States in order to adapt to the elimination of preferences on banana and sugar products.
2. Introduction of initiatives for the effective education of the populace to improve the skill level of workers and their ability to function in the higher technology global labor market.
3. Cooperation in peace-keeping and disaster preparedness, so that the weak and ineffective CARICOM response to natural disasters in Grenada and Haiti and to the violent upheaval in Haiti become relics of the past.

In light of this analysis, in order for the CARICOM economic integration model to succeed I recommend that the Community undertake the following institutional changes:

1. Strengthen the Secretariat's role and scope of competence so that it assumes an executive and enforcement role, instead of its current administrative and facilitative one.
2. Increase the coordination of activities and competences among the Community institutions, including the elimination of redundant organizations.
3. Demand domestic implementation of Community undertakings within a brief, limited turnaround period, enforced with the imposition of credible coercive sanctions.
4. Formalize and strengthen the participation of the citizenry, particularly through the expansion of the role of the ACCP (Assembly of Caribbean Community Parliamentarians).

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<sup>284</sup> *Barbados Creates Rift Within CARICOM: See Who Are the Heroes and Who Are the Knaves*, June 6, 2005, <http://www.margueritelaurent.com/pressclips/riftinCARICOM.html>.

<sup>285</sup> *Antigua-Barbuda Pushes for Special Treatment for OECS States*, *supra* note 117.

5. Include the citizens of the Member States in the integration process through education about the aims and mechanisms of regional economic integration.

